(16,970 and 16,971.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 385.

SAMUEL H. STONE, AUDITOR; CHARLES FINLEY, SECRETARY OF STATE, AND G. W. LONG, TREASURER OF THE COMMONWEALTH OF KENTUCKY, ET AL., APPELLANTS,

vs.

THE FARMERS' BANK OF KENTUCKY.

No. 386.

THE FARMERS' BANK OF KENTUCKY, APPELLANT,

vs.

SAMUEL H. STONE, AUDITOR; CHARLES FINLEY, SECRETARY OF STATE, AND G. W. LONG, TREASURER OF THE COMMONWEALTH OF KENTUCKY, ET AL.

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Circuit Court of the United States, Sixth Circuit and District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
S. H. STONE, ETC., Defendants. } No. 274.

5 Proceedings of the circuit court of the United States for the district of Kentucky, at its regular term, begun and held at the Federal court hall, in the city of Frankfort, on Monday, June 13, 1898.

Present: Honorable John M. Harlan, circuit justice; Honorables W. H. Taft and H. H. Lurton, circuit judges.

FARMERS' BANK OF KENTUCKY, Complainant,
versus
S. H. STONE, ETC., Defendants. } 274.

Be it remembered that heretofore, to wit, on May 8, 1897, came the complainant, Farmers' Bank of Kentucky, by its counsel, W. S. Pryor and Jno. W. Rodman, and filed in the clerk's office of our said court *their* bill of complaint and exhibits against the above-named defendants, S. H. Stone, etc., which bill of complaint is in the words and figures as follows, to wit:

To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

The Farmers' Bank of Kentucky brings this its bill of complaint against Samuel H. Stone, Charles Finley, George W. Long, The Board of Councilmen of the City of Frankfort, County of Franklin, City of Henderson, County of Henderson, City of Georgetown, County of Scott, and thereupon complainant says:

I.

The complainant is a corporation duly incorporated by and organized under the laws of the State of Kentucky, and a citizen of said State; that it was incorporated by an act of the General
6 Assembly of the Commonwealth of Kentucky, entitled "An act to incorporate the Farmers' Bank of Kentucky," approved May 16, 1850.

II.

The defendant, Samuel H. Stone, is the auditor of public accounts of the State of Kentucky; the defendant, Charles Finley, is the secretary of the State of Kentucky; the defendant, George W. Long, is the treasurer of the State of Kentucky; the defendant, The Board of Councilmen of the City of Frankfort, is a municipal corporation duly incorporated by and organized under the laws of the State of

Kentucky; the defendant, The County of Franklin, is a municipal corporation duly created by and organized under the laws of the State of Kentucky; the defendant, The City of Henderson, is a municipal corporation duly created by and organized under the laws of the State of Kentucky; the defendant, The County of Henderson, is a municipal corporation duly created and organized under the laws of the State of Kentucky; the defendant, The City of Georgetown, is a municipal corporation duly created by and organized under the laws of the State of Kentucky; the County of Scott is a municipal corporation duly incorporated by and organized under the laws of the State of Kentucky.

III.

The complainant was created a body politic and corporate by said act of the General Assembly of the Commonwealth of Kentucky, approved February 16, 1850. By this act it was given full power and authority to acquire, hold, possess and enjoy all such real estate, goods, effects and chattels as should be convenient for the transaction of its business, and which might be conveyed to it as surety for any debt, or purchased in satisfaction of any judgment or decree in its favor, or in the purchase of any property in which it might have a lien.

It was directed that it should have and keep its principal office of discount and deposit in the city of Frankfort, and that it might have offices of discount and deposit in other parts of the State. Its business was declared to be that of loaning money, discounting promissory notes and bills, and dealing in exchange, and it was given authority to issue bills or bank notes, payable to the bearer on demand, at any of its offices of discount and deposit, but not of less denomination than five ($5.00) dollars. It was given the general power of a banking corporation.

It was authorized by its charter to create a branch at Henderson, Kentucky, and a branch at Georgetown, Kentucky.

The said corporation was duly organized under the terms of the said act of incorporation, and said two branches were established and located at Henderson and at Georgetown, Kentucky, in accordance with the provisions of its said charter and the amendments thereto, and its corporate life, including said branches, has
7 ever since continued; and it has performed all the duties imposed upon it by its act of incorporation and the amendments thereto and the laws of the land. It duly established and has ever since maintained a branch at Henderson, Kentucky, and a branch at Georgetown, Kentucky, and has fully performed the duties required by its said charter and amendments thereto.

IV.

By its original charter, which, as aforesaid, was approved February 16th, 1850, it was provided that the complainant should continue a body politic and corporate until the 1st day of May, 1880.

By an act of the General Assembly of the Commonwealth of Ken-

tucky entitled "An act extending the charter of the Farmers' Bank of Kentucky," approved March 10th, 1876, it was provided that the charter privileges of the complainant should continue in full force for twenty-five (25) years from the first day of May, 1880. Said act of extension reads as follows:

"Be it enacted, etc.—

"SECTION 1. That the charter of the Farmers' Bank of Kentucky as amended, be extended for the period of twenty-five (25) years from the termination of its charter as therein fixed: *Provided*, that said charter and amendments shall be subject to amendment or repeal by the General Assembly by general or special acts, and, *Provided further*, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

So by reason of said act of March 10th, 1876, its charter life will not expire until the first day of May, 1905.

V.

By the 15th section of its original charter it was provided as follows:

"It shall be the duty of the cashier of the principal bank, on the 1st day of July, 1851, and on the 1st day of July in each succeeding year during the continuance of this charter, to pay to the treasury of this Commonwealth fifty (50) cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full for all tax or bonus: *Provided*, that no tax shall be paid until said bank goes into operation; and *provided further*, that the tax or bonus hereby proposed to be imposed on each share of stock in this bank, or such as shall hereafter be imposed on each share, is hereby set apart and forever dedicated to the cause of education on the common-school system; and that whenever the same, or any part thereof, shall be diverted otherwise by legislative enactment, said bank shall then be exonerated from the payment of any tax or bonus whatever."

8

Complainant states that said tax of fifty (50) cents on each share of its stock was a tax then largely in excess of the ordinary rate of taxation paid by other moneyed capital or property in the State of Kentucky, including municipal and county taxes; and it continued to be so in excess until a long time thereafter. The complainant says its capital stock as it now exists is much less than that originally authorized by its charter—the original amount authorized was two million three hundred thousand dollars, whereas its present capital stock is nine hundred and ninety thousand four hundred dollars. The complainant paid each year this tax thus levied upon it, down to July 1st, 1886, from which time it has paid a different amount, as will be hereinafter explained.

VI.

The complainant says that by the settled course of decisions of the highest court of this State the meaning of these provisions in

its charter has been fixed and determined. That by a decision rendered by the Kentucky court of appeals, the highest court in Kentucky, on the — day of November, 1869, in the case of the complainant against the Commonwealth and Greenup county, reported in 6th Bush, page 127, it was determined that this above-quoted language in said section 15 meant to include taxation by any of the municipal subdivisions of the State, and prevented such municipal subdivisions from taxing the real estate of the complainant although situated within their boundaries.

The Commonwealth of Kentucky and Greenup county instituted proceedings in the Greenup county court to assess certain real estate held by the bank and which it acquired by purchase, in order to collect some of its debts. The county court upon the issues raised by the parties declared that it could not be taxed for any such purpose, and the case was taken to the Kentucky court of appeals, and on the 24th day of November, 1869, the said court rendered an opinion in said case, which reads as follows:

"By the first section of 'An act to incorporate the Farmers' Bank of Kentucky,' p. 7, Session Acts 1849–'50, full power is conferred on the bank to acquire, hold, possess, use, occupy and enjoy, and the same to sell, convey and dispose of, all such real estate, goods, effects and chattels as shall be convenient for the transaction of its business, or which may be conveyed to said bank as surety for any debt, or purchased in satisfaction of any judgment or decree in favor of the bank, or in the purchase of any property on which said
9 bank may have a lien. In section 15 of said act it is provided that it shall be the duty of the cashier of the principal bank, on the 1st day of July, 1851, and on the 1st day of July of each succeeding year during the continuance of this charter, to pay to the treasury of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus, etc. By a compliance with the section last quoted the bank was to be discharged from the payment of all and every other tax. From the amplitude of the language no other rational construction can be given to it. The property which is attempted here to be taxed was doubtless taken by the bank or purchased in satisfaction or part satisfaction of a debt, and represents the assets of the bank to its value, and is no more subject to taxation than the notes or bills held by the bank or money in its vaults. The court below therefore erred in refusing to correct the assessments for the years 1867 and 1868 at the request of the bank. Wherefore the judgment is *reversed*, and the cause is remanded with directions to the court to correct said assessment-lists so far as said bank is concerned, and enter a judgment releasing said bank from paying tax on the lands in the notice described, from the payment of taxes for county and State purposes for the year 1868; it having been already released from the payment of the State revenue for 1868."

A certified copy of said opinion is filed herewith as part hereof, together with a copy of the mandate from said court in said case, and complainant says that judgment was rendered in the county

court of Greenup county in conformity with the opinion of the Kentucky court of appeals.

By a decision rendered by the Kentucky court of appeals on June 5th, 1888, it was determined (confirming the judgment of the Franklin circuit court) that the said 15th section as aforesaid constituted a contract between the complainant and the State, by which the State could not tax the complainant at a greater rate than 50 cents on each hundred dollars of stock; that this included all taxation of all kinds, State, county and municipal, and upon all kinds of property of the said bank.

VII.

On March 18th, 1876, there was approved an act of the legislature of Kentucky, entitled, "An act to make taxation equal and uniform in counties where an *ad valorem* tax is levied by the county court." By the second section of this act it was made the duty of the chief officer of any bank doing business or owning property in the county, to list with the assessor all the property of the bank.

By the third section of the act it was provided that all the property thus listed and assessed should be subject to an equal and uniform rate of taxation.

Under this act the Franklin County Court, being the fiscal authority of the defendant, The County of Franklin, attempted to assess, for county taxation, the property and choses in action of the complainant situated in Franklin county, where complainant's principal bank was situated. Thereupon complainant filed a bill in equity in the circuit court of Franklin county against the said Franklin County Court for an injunction against the said Franklin County Court, restraining and enjoining it from endeavoring to collect any tax on the basis of such assessment. In said suit the complainant set forth and claimed its contract with the State by virtue of the provisions of its charter as hereinbefore set out, and claimed that the same was inviolable and that the act of 1876, so far as it attempted to repeal or *impair* the same was unconstitutional and void. The said Franklin County Court, being duly brought before the court, the cause came on for hearing, and resulted in a judgment establishing the right of the complainant to relief upon the basis of its said contract, and enjoining the said Franklin County Court from endeavoring to enforce the said assessment.

About the same time the Board of Councilmen of the City of Frankfort caused certain real estate belonging to the complainant, and situated in the city of Frankfort, to be assessed for taxation, and attempted to collect taxes thereon; whereupon the complainant filed a bill against the Board of Councilmen of the City of Frankfort in said Franklin circuit court, making similar allegations to those above mentioned in reference to the suit against the Franklin County Court, and praying for an injunction against the Board of Councilmen of the City of Frankfort restraining them from attempting to collect the said taxes against the said complainant's

real estate. And this cause coming on to be heard, judgment was rendered in this cause also; and thereupon the said Board of Councilmen of the City of Frankfort was perpetually enjoined from attempting to collect the said tax. In both of these causes the contract between this complainant and the State of Kentucky, as hereinbefore set up, was fully pleaded and alleged, and relief was asked for upon the basis thereof, and in each of the cases the court adjudged that the said contract was in existence and continued during the charter life of the bank as extended, and rendered judgment accordingly. Each of these defendants, The Franklin County Court, and The Board of Councilmen of the City of Frankfort, prayed an appeal to the Kentucky court of appeals from said judgments, and the causes coming on to be heard in the court of appeals, the judgment in each case was affirmed by the said court of appeals, the said court holding that the said 15th section of complainant's charter was a contract by which the legislature could tax the
11 complainant, at the most, fifty cents on each one hundred dollars of its stock; that this was in lieu of all other taxation of every kind, State, county, and municipal, upon the property of every kind of the said complainant. That the said contract existed not only during the original charter life of the complainant, but during the charter life of complainant as extended by the act above referred to, and that said acts were not repealable by the State of Kentucky, and were beyond the power of the legislature to repeal or modify. A certified copy of the entire record of both cases as they appear in the Kentucky court of appeals, together with a copy of the opinion of the court in all the cases including the above two cases, is filed herewith as part hereof marked "Exhibit A" and "Exhibit B."

The complainant pleads and relies upon the said records and said judgments and opinions of the Kentucky court of appeals as conclusive upon the defendants.

VIII.

By an act approved May 17th, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky" it was provided that the cashier of all State and national banks should annually, on the first day of July of each year, make report of their condition to the auditor, and should pay into the State treasury 75 cents on each share of their capital stock, and should in addition, pay into said treasury on their surplus, undivided profits, and accumulations, in excess of 10 per cent. of their capital stock, a tax at the same rate as the real property should be assessed; and it was distinctly provided by the act that the said taxation should be in full of all tax, State, county and municipal, except that the real estate and the buildings owned and used by the banks in conducting their business should not be exempted from tax for municipal or county purposes; and that such real estate alone might be taxed for county and municipal purposes as other real estate was taxed.

As a condition to its operation upon any of the banks referred to therein, said act, in the fourth section thereof, provided as follows:

"SECTION 4. Each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its assent to the levying of said tax, and agree to pay the same as hereinbefore provided, and waive and release all right under the act of Congress or under the charter of the State banks, to a different mode or a smaller rate of taxation, which consent and agreement to and with the State of Kentucky shall be evidenced by writing, under the seal of said bank, and delivered to the governor of the Commonwealth, and said agreement and consent being delivered, and in consideration thereof, such bank
12 and its shares of stock shall be exempt from all other taxation whatsoever, so long as said taxation shall be paid, during the corporate existence of the bank."

The consent provided for by this act, and the notice to the governor, were further required to be given before the next meeting of the General Assembly; provided, the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the complainant on the 6th day of December, 1887, a quorum of the stockholders and a majority thereof being present, such stockholders, and a majority in interest thereof, did give their consent to a levying of said tax, and to the waiver and release of all right under its charter to a different mode or a smaller rate of taxation, and said consent of complainant to the waiver and release aforesaid, and the said agreement, was certified in writing, under the seal of the bank by the proper corporate authority to the governor of the Commonwealth and delivered to him before the next meeting of the General Assembly after the passage of said act. That the complainant files herewith as part hereof a duly certified copy of said resolution, consent and agreement, marked "Exhibit C."

IX.

The complainant, through its cashier, made its report and paid into the State treasury in 1886 the full tax required by the act described in the foregoing paragraph, and which is commonly known as the "Hewitt act," and in conformity with said Hewitt act, has made its reports in proper form to the auditor of public accounts on the 1st day of July in each and every year up to this time, and until the year 1893 paid into the State treasury, on or about the 1st day of July of every year from 1886, the full tax required by the said Hewitt act, being 75 cents on each share of its capital stock, and a tax at the same rate as real property was assessed by the State, upon its surplus, undivided profits and accumulations in excess of 10 per cent. of its capital stock. These reports continued to be made by the complainant; but on July 1, 1893, the auditor refused to receive the tax under the Hewitt law, although the complainant tendered the same. He refused to receive it on the 1st of July, 1894, although the complainant again tendered the same. The complainant paid the same about the first of July, 1895, and on or about the 1st of July, 1896, and in

the spring of 1896, at the request of the auditor, and after certain litigation had been determined in its favor, paid to the auditor the difference between the amount paid by it on July 1, 1893, and July 1, 1894, and the amount which it tendered at these times, and which was the amount due under the Hewitt law; so that it is now true that the complainant has every year, down to and including 1885, paid the full tax called for under its charter;
13 and from 1886 to 1896, the full tax called for under the Hewitt law. It has also, during this period (1886 to 1896), paid in full to the municipalities where its banking-houses are situated the full tax thereon. The legislature of Kentucky passed an act which went into force on November 11, 1892. The third article of said act dealt with the assessment of certain corporations, among others banks. By this act it is provided in substance that every incorporated bank shall, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district where its franchise may be exercised. The auditor, treasurer and secretary of state are by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is provided, in order to determine the value of the franchise, the banks shall each file reports on or before the 1st day of March in each year, which reports shall be made up to and including the 31st day of the preceding December. These reports are to be verified by a chief officer of the bank, and show the following facts: the name and principal place of business of the bank; the amount of capital stock; number of shares; amount of stock paid up, nominal and real value thereof; highest price at which such stock was sold at a *bona fide* sale within twelve months next before the 15th day of September of the year in which this statement is required to be made; amount of surplus funds and undivided profits, and the value of all other assets; total amount of indebtedness as principal; amount of gross or net earnings, including interest on investments, and income from all other sources for twelve months next preceding the 31st day of December of the year in which the statement is required to be made; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale; and such other facts as the auditor may require. Upon this information, and such other information as the board can obtain, it is authorized and directed to fix the value of the capital stock of the bank, and from the amount thus fixed to deduct the assessed value of all tangible property assessed in the State, or in the counties where situated, and the remainder thus found is to be the value of the corporate franchise subject to taxation under the said act.

It is further provided that the said board shall apportion the value of such franchise among the several taxing jurisdictions entitled to a share of said tax. It is further provided that the auditor of the State, at the expiration of 30 days after the final determination of such values, shall certify to the county clerk of the counties where any portion of the corporate franchise of such banks shall be liable

to local taxation, the amount thereof liable for county or
14 State taxes; and such certificate is, by the county clerk, to be filed in his office, and by him certified to the collecting officer of the county and city for collection.

It is further provided that the taxes assessed by the State board of valuation and assessment shall be due and payable on July 1st succeeding such report.

It is further provided that in the event the banks fail to make such report and pay such tax a penalty of 10 per cent. on the amount of tax shall attach, and thereafter such tax shall bear interest at the rate of 10 per cent. per annum, and any bank or trust company failing to pay its taxes, penalties and interest after becoming delinquent, is to be deemed guilty of a misdemeanor and upon conviction is to be fined for each day it remains unpaid, to be recovered by indictment or civil action, of which the Franklin circuit court shall have jurisdiction.

X.

The complainant states that the amount of its capital stock on the 31st day of December, 1894, on the 31st day of December, 1895, and on the 31st day of December, 1896, was $991,400.00 and its contingent fund and fund to cover losses on each of said dates was as much as $170,000.00, that the amount of the value of its capital stock as fixed by the board of valuation and assessment as of December 31, 1892, was $1,163,919.27, of which there was apportioned to the city of Frankfort and Franklin county, $495,919.27, to the city of Henderson and Henderson county, $359,000.00, to the city of Georgetown and Scott county, $300,000.00.

That this was substantially the same valuation and apportionment as of December 31, 1893, and this would be substantially the same valuation and apportionment as of December 31, 1894, December 31, 1895, and December 31, 1896; that the tax rate in the city of Frankfort for the year 1895 was $1.45 on $100, for 1896 the tax rate was $1.45, and for 1897 it has been fixed at $1.45.

That the tax rate for the county of Franklin for the year 1894 was 56⅔ cents, for 1895 56⅔ cents, for 1896 55 cents; the tax rate for 1897 has not been fixed, but will be approximately 55 cents.

The tax rate in the city of Henderson for 1894 was 70 cents; for the year 1895 was $1.25; for the year 1896 it was $1.47; for 1897 it is about the same as 1896. The tax rate for the county of Henderson for 1894 was 57½ cents; for 1895 it was 57½ cents; for 1896 it was 57½ cents; for 1897 it has not been fixed, but will approximately be the same as for 1896.

The tax rate in the city of Georgetown for the year 1895 was 70 cents; for the year 1896 it was 90 cents; for 1897 it will be the same as 1896. The tax rate for the county of Scott for 1894 was 74 cents; for 1895 it was 82½ cents; for 1896 it was 94 cents; for 1897 it has not been fixed, but will approximately be the same as for 1896.

15 The rate of State taxation was 42½ cents on the $100.

So the complainant says that the amount of taxes which it

would have to pay under the board of valuation and assessment law over and above what it would have to pay under the Hewitt law would be more than $15,000 per annum.

Complainant further states that it has been the policy of the State, by legislation, sustained by judicial decision, to lessen the rate of taxation on the full amount of the capital stock of the bank, because the banks pay tax on the full par value of its capital stock, and because of their being prevented by law from loaning their money at a greater rate of interest than 6 per cent., whereas the citizens and other tax-payers, under our system of valuation, are, by giving in their property for taxation at not exceeding one-half of the value of the property assessed; thereby making the banks, even under the 75-cent rate, pay as much, and more, tax than other tax-payers.

XI.

Complainant says that this scheme of taxation violates the contract made between it and the State in its charter and the amendments thereto, and violates the contract made between it and the State under the Hewitt law, and is very largely in excess of the taxation provided for by its charter, or by said Hewitt law; and the act of the legislature of Kentucky instituting such a method of taxation is violative of the Constitution of the United States, and particularly of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract, and is void.

XII.

The said method of taxation is also violative of the constitution of the State of Kentucky in this, that by the said constitution of the State of Kentucky it is expressly provided that the General Assembly shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect taxes, in this, that the said law provided for an assessment of the capital stock of corporations, among others banks, by a State board of valuation and assessment, and provided for the certification of such value by the State board to counties and municipalities where any such capital stock is situated or franchise employed, giving to said State board the right to apportion the same among the taxing districts, and providing that the corporation shall pay to such taxing districts local taxes thereon.

XIII.

The said law having been thus passed in 1892 the State board of valuation and assessment valued the capital stock of the complainant, and deducting therefrom the assessed value of its real estate (which is small in proportion) certified to the authorities of
16 the defendant-, The County of Franklin, The Board of Councilmen of the City of Frankfort, The City of Henderson, The County of Henderson, The City of Georgetown, The County of Scott,

the proportion of such value found to be taxable by the county of Franklin, the city of Frankfort, the county of Henderson, the city of Henderson, the county of Scott and the city of Georgetown for the year 1893. The county of Franklin caused to be placed in the hands of R. D. Armstrong, the sheriff of said county and the collector of its revenues, the tax bill made out accordingly; and the board of councilmen of the city of Frankfort caused a tax bill to be made out upon such valuation for the collection of city taxes thereon, and the city of Henderson caused a tax bill to be made out upon such valuation for the collection of city taxes thereon.

XIV.

On the 22d day of December, 1893, the complainant filed in the circuit court of Franklin county, that being a court of general jurisdiction, its petition against the county of Franklin and R. D. Armstrong, sheriff of said county, in apt terms setting forth in the petition the contract between it and the State in regard to taxation under its original charter and under the Hewitt law, claiming the benefit of such contract, and claiming that no taxes could be collected from the complainant except in pursuance thereof, during its charter life; and claiming that the act of the legislature of November 11, 1892, was unconstitutional and void as impairing the obligation of their contracts, and praying the court to establish their contracts and to enjoin the said Franklin county and R. D. Armstrong, sheriff, from attempting to collect any taxes contrary thereto.

Issue having been joined upon complainant's said suit, a judgment was rendered by the Franklin circuit court in said case to the effect, that the act of November 11, 1892, did not violate any contract between the complainant and the State, and judgment was entered accordingly.

Thereupon this complainant appealed from said judgment to the court of appeals of Kentucky. In that court, its appeal having come on to be heard, the court adjudged that the judgment of the lower court was erroneous, and remanded the case to the Franklin circuit court for a judgment in conformity with its opinion.

Thereupon the said Franklin circuit court, on January 21, 1896, entered the following judgment, which has ever since and does now remain in full force and effect:

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals, heretofore filed reversing the former judgments of this court, and the court being sufficiently advised, it is adjudged that article 2 of the act of
17 the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17th, 1886, (Gen'l Stats., chapter 92, art. 2,) and the acceptance of the provisions thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of it

charter, be assessed for taxation or taxed for State purposes in a different mode or at a smaller rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and of the act of November 11, 1892, (art. 3, chap. 103, Acts 1891–'2–'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax, for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution, and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same, or any part of the same, for county or municipal taxation; that the temporary injunction which was granted in this case at the commencement of the action be and the same is now hereby made perpetual, and the defendants be, and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any taxes for the county of Franklin upon the franchise or property of the plaintiff, except taxes on its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

A duly certified copy of the record in said case as it appears in the court of appeals is filed herewith as part hereof, marked "*Exhibit D*," and the complainant states that the said exhibit contains the whole proceedings in said cause except the decree of the Franklin circuit court on January 21, 1896, the terms of which have been given above, and a duly certified copy whereof is filed herewith as part hereof, marked "*Exhibit E.*"

XV.

The complainant further states that the said board of valuation and assessment, acting under said law of November 11, 1892, having certified to the city of Frankfort as set forth in a preceding paragraph, the amount of its proportion of the valuation of complainant's franchise, and the board of councilmen of the city of Frankfort attempting to collect municipal taxes thereon, the complain-
18 ant on the 6th day of September, 1894, filed in the Franklin circuit court, which is a court of general equity jurisdiction, its petition against the said board of councilmen of the city of Frankfort, setting forth its contract under its original charter and under the Hewitt law with the State, and relying upon the same, and setting forth the attempted violation thereof under the act of November 11, 1892, and praying judgment against the defendant, The Board of Councilmen of the City of Frankfort, etc., that the said contracts between the complainant and the State be adjudged of full force and effect and the said act of November 11, 1892, be declared unconstitutional and void, and the complainant's right to

establishment and enforcement of its contract, during its charter life, be established, declared and enforced.

Issue being joined, the cause came on to be heard, and resulted in a judgment of the Franklin circuit court that the said act of November 11, 1892, did not violate any contract between the complainant and the State, and adjudged that the complainant was not entitled to relief against said tax.

And thereupon the complainant appealed to the court of appeals of the State of Kentucky. The cause then came on to be heard and was argued by counsel for the board of councilmen of the city of Frankfort, and by the attorney general of the State, insisting that the said contract did not exist and had not been violated, and thereupon the cause having come on for decision, the court of appeals rendered its opinion and issued a mandate directing that the judgment of the lower court should be reversed, and a new judgment entered in conformity with the opinion transmitted, and thereupon the cause having been transmitted to the Franklin circuit court, came on for judgment on January 21, 1896, whereupon the following judgment was entered, being in words and figures as follows:

"This day came the parties by their attorneys, and this cause having been submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed reversing the former judgment of this court, and the court being sufficiently advised, it is adjudged that article 2 of the act of the General Assembly entitled 'An act to amend the revenue laws of the Commonwealth of Kentucky,' approved May 17, 1886, (Gen'l Stats., chapter 92, art. 2,) and the acceptance of the provisions thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former, by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business;

19 that the provisions of the present constitution of this State and of the act of November 11, 1892, (art. 3, chap. 103, Acts 1891–'2–'3,) in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax, for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution, and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation; that the temporary injunction which was granted in this cause at the commencement of the action be and the same is now made perpetual, and the defendants be and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes on its real estate

used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended."

The complainant files herewith as part hereof a duly certified copy of the proceedings in the cause, being the full record of the court of appeals marked "*Exhibit 'F,'*" which contains the entire record of the cause, except the decree of judgment entered upon the return of the cause, a copy of which judgment is filed herewith as part hereof, marked "*Exhibit 'G.'*"

XVI.

The complainant further states that the said board of valuation and assessment, acting upon said law of November 11, 1892, having certified to the city of Henderson, as set forth in a preceding paragraph, of the valuation of complainant's franchise, and the said city of Henderson attempting to collect municipal taxes thereon, the complainant, on the — day of ——, 1895, filed in the Henderson circuit court, which is a court of general equity jurisdiction, its petition against said City of Henderson, setting forth its contract under its original charter and under the Hewitt law with the State, and relying on the same, and setting forth the attempted violation of the same under the act of November 11, 1892, and praying judgment against the defendant, The City of Henderson, that the said contracts between the complainant and the State be adjudged in full force and effect, and the said act of November 11, 1892, be declared unconstitutional and void, and the complainant's right to the establishment and enforcement of its contract during its charter life be established and enforced.

Issue having been joined, the cause came on to be heard, and resulted in a judgment of the Henderson circuit court that the
20 said act of November 11, 1892, did not violate any contract between the complainant and the State, and adjudging that the complainant was not entitled to the relief against the said tax, and thereupon the complainant appealed to the court of appeals of the State of Kentucky. The cause came on to be heard, and was argued by counsel for the city of Henderson and by the attorney general of the State, insisting that the said contract did not exist and had not been violated, and thereupon the cause came on for decision, and the court of appeals rendered its opinion therein and issued a mandate directing that the judgment of the lower court should be reversed and a new judgment entered in conformity with the opinion transmitted; thereupon, the cause having been transmitted to the Henderson circuit court and the mandate of said court of appeals filed, the said Henderson circuit court rendered judgment in said case in conformity with said opinion of the Kentucky court of appeals, establishing said contracts and adjudging said acts to be unconstitutional. A certified copy of said entire record, as it appears in the Kentucky court of appeals, is filed herewith as part hereof, marked "*Exhibit 'H,'*" and a certified copy of said judgment of the Henderson circuit court is filed herewith as part hereof, marked "*Exhibit 'K.'*"

XVII.

The premises considered, the complainant says that it has been fully and finally adjudicated in a proceeding between it and the defendants, The Board of Councilmen of the City of Frankfort, The County of Franklin and The City of Henderson—

That complainant's contract is valid and enforceable, and that the complainant can be subjected to no greater rate of taxation than that agreed to by it under the Hewitt law, or if the Commonwealth of Kentucky shall be adjudged to have retired from said contract, then to no greater rate of taxation than is provided for under the complainant's charter and amendments.

XVIII.

The complainant has always been ready to pay, and it has paid all the taxes due by it under the provisions of the Hewitt act, but if it should be determined that the State of Kentucky has the right to retire from that contract, then the complainant submits that it is entitled to be restored to its former position, and it will then be ready and willing to pay all taxes that may be exacted from it according to the terms of its charter and amendments.

XIX.

The complainant says that the defendants, Samuel H. Stone, Charles Finley and George W. Long are threatening, and unless restrained by this honorable court, will proceed to value the franchise of the complainant in the manner set forth under the
21 act of November 11, 1892, for the years 1895, 1896 and 1897, and certify such value to the county clerks of Franklin county, Henderson county and Scott county, to be by each of the clerks of said counties certified to the collecting officers of each of said respective counties, and to the collecting officers of each of said cities of Henderson and Georgetown, and to the collecting officers of the board of councilmen of the city of Frankfort; that such assessments will be illegal; in violation of the complainant's contract, as has been heretofore in causes between the complainant and the several defendants adjudged, and will be unlawful and violative of complainant's contract, and will cast a cloud over complainant's franchise; cause a multiplicity of suits to be brought against complainant, and damage it in a way that cannot be repaired or estimated at common law; and from these threatened wrongs the complainant has no remedy at the common law, but its only remedy is by a bill in equity; and unless restrained by this honorable court, the defendants, The Board of Councilmen of the City of Frankfort, The County of Franklin, The City of Henderson, The County of Henderson, The City of Georgetown and The County of Scott, will attempt to levy and collect taxes based upon the apportionment of the valuation found by said board of valuation and assessment, and will subject the complainant to the harassment of many suits, and cast a cloud upon its franchise and property, and an effort will be

made to enforce penalties against this complainant, as hereinbefore set out.

XX.

The premises considered, the complainant prays that the said Samuel H. Stone, Charles Finley and George W. Long be perpetually enjoined and restrained from assessing the value of complainant's capital stock under the act of November 11, 1892, for the years 1895, 1896 or 1897, or any other year, and that the said defendant, Samuel H. Stone, be enjoined from certifying any such valuation to the said several municipalities, and that the said several municipalities, the board of councilmen of the city of Frankfort, the county of Franklin, the city of Henderson, the county of Henderson, the city of Georgetown and the county of Scott be enjoined and restrained from endeavoring to collect any tax upon any such valuation; that the complainant's contract be fully established; that it be declared that upon conforming to its said contract, as hereinbefore set up, by making the payments under the Hewitt law or under its charter, no other or further taxes shall be exacted from it under any form or by any authority.

May it please your honors to grant unto your complainant a writ of subpœna under proper authority to be issued against the said Samuel H. Stone, Charles Finley and George W. Long, the Board of Councilmen of the City of Frankfort, the County of Franklin, the City of Henderson, the County of Henderson, the City
22 of Georgetown and the County of Scott, under suitable penalty to be therein fixed, and upon a day therein named, to appear and answer to this bill of complaint, but not under oath, answer under oath being waived, and to stand to and abide by all the orders and decrees that this court may enter in the premises; and your orator will ever pray for this and all other appropriate relief.

W. S. PRYOR,
JOHN W. RODMAN,
Complainant's Solicitors.

STATE OF KENTUCKY, }
Franklin County, } *sct:*

Thomas Rodman says he is the president of The Farmers' Bank of Kentucky, the complainant; that the facts stated herein, so far as stated from his personal knowledge, are true, and so far as stated from information he believes to be true.

THOMAS RODMAN.

Subscribed and sworn to before me by Thomas Rodman this 8th day of May, 1897.

[SEAL.]

CHAS. N. WIARD,
Deputy Clerk,
For W. G. CHAPMAN,
Clerk U. S. Courts for Dist. of Kentucky, at Frankfort.

Exhibit A reads as follows:

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the 5th day of June, A. D. 1888, Chief Justice W. S. Pryor, Joseph H. Lewis, W. H. Holt, and Caswell Bennett sitting.

FRANKLIN COUNTY COURT and J. W. GAINES, Sheriff of Franklin County, Appellants,
versus
THE FARMERS' BANK OF KENTUCKY, Appellee.

Be it remembered that heretofore, to wit, on the 16th day of July, A. D. 1884, the appellants by their counsel filed in the clerk's office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

STATE OF KENTUCKY:

Proceedings before the Honorable C. S. French, judge of the court of common pleas for Franklin county, at the court-house, in the city of Frankfort, on the 17th day of May, 1884.

Be it remembered that on the 6th day of September, 1883, the following petition was filed in the clerk's office of the court aforesaid:

23 Franklin Common Pleas Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
FRANKLIN COUNTY COURT and J. W. GAINES, Sheriff of Franklin County, Defendants.
} Petition in Equity.

The plaintiff, The Farmers' Bank of Kentucky, says that by an act of the General Assembly of Kentucky entitled, "An act to incorporate the Farmers' Bank of Kentucky" approved February 16, 1850, the plaintiff was established a bank by the name aforesaid with the capital named in said act to be divided into shares of $100 each, and to be subscribed and paid for by individuals, companies and corporations, which subscribers and shareholders, their successors and assigns were by said act created a body politic and corporate by the name and style aforesaid, and to continue such until the first day of May, 1880, and by that name to be competent to contract and be contracted with, to sue and be sued, &c., "with full powers to acquire, hold, possess, use, occupy and enjoy and the same to sell, convey and dispose of all such real estate goods, effects and chattels as shall be convenient for the transaction of its business, or which may be conveyed to said bank in surety for any debt or purchase in satisfaction of any judgment or decree in favor of the bank, or in the purchase of any property on which the said bank may have a lien," and by the 15th section of said act the cashier of the principal bank — re-

quired on the first day of July, 1857, and on the first day of July in each succeeding year during the continuance of said charter to pay to the treasurer of this Commonwealth fifty cents on each hundred dollars of stock held and paid for in said bank, "which shall be in full of all tax or bonus."

Plaintiff says that by an act of said General Assembly approved March 10th, 1876, entitled "An act extending the charter of Farmers' Bank of Kentucky," the charter of said bank, as amended, was extended for the period of twenty-five years from its termination as therein provided, to wit, from the said first day of May, 1880. Said several acts and all amendments thereto are referred to as part hereof.

Plaintiff says that soon after the adoption of said original charter, and in conformity with its terms and provisions, said bank was organized and established, and has ever since been, and still is, in regular operation doing the business authorized by its said charter and amendments thereto; and for the location of its principal office of discount and deposit in the city of Frankfort, and for the safe and convenient transaction of its business the plaintiff purchased a lot or lots of ground situated on the north side of Main street, in said city, and erected thereon a building suitable for a banking-house, which building includes rooms suitable for and used as a residence for the cashier of said bank, and for one or more of its clerks,
24 said building being so constructed and arranged as to secure and promote the convenient transaction of the business of said bank and the protection and safety of the property under its control; that neither said building nor the lot of ground on which it stands, nor any part of either is used, or was purchased or intended for any other purpose or object than as stated, and all of said building and ground are convenient and necessary for the transaction of said business and for the safety and security of said property.

Plaintiff further says that pursuant to and in conformity with the terms and requirements of its charter, it has on the first day of July in each and every year since said bank went into operation, including the first day of July in the present year, 1883, by the cashier of its principal bank, paid to the treasury of the Commonwealth of Kentucky, fifty cents on each hundred dollars of stock held and paid for in said bank, which payments were and are in full of all tax or bonus. Yet, the plaintiff says, that notwithstanding the premises, the county court of Franklin county, on the 14th day of March, 1883, upon the motion of the county attorney, made and entered of record an order ordering in substance that a summons be issued by the clerk of said court against the plaintiff and others returnable on the 2nd day of April "to list or show cause why it shall not list their property in Franklin county for taxation for county purposes, as required by law," and on the day last aforesaid a summons was issued in conformity with said order, and was served upon the plaintiff, requiring plaintiff to appear before the Franklin county court on Monday, April 2, 1883, and list, or show cause why it shall not list, all the property of said bank, situated in said county, for

assessment and taxation for county purposes for the years 1876, 1877, 1878, 1879, 1880, 1881, 1882 and 1883, as required by the law of this State.

The plaintiff appeared in said court in obedience to said summons and filed its demurrer and objection to said proceedings, denying that said court had any jurisdiction of the subject-matter thereof, or any authority to require plaintiff to list or show cause why it shall not list, its property or any part thereof in Franklin county, for taxation for county purposes. Plaintiff also filed its response, in which it was alleged in substance that plaintiff had paid to the treasurer of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, which payments were by the terms of its charter in full of all taxes or bonus; also that plaintiff had purchased ground in the city of Frankfort, on which it had erected suitable buildings for the transaction of its business, all of which was paid for with the stock of plaintiff and used for no other purpose; and also that all the other property of plaintiff, except a small amount of office furniture, consisted of notes, bills, accounts, choses in action and evidences of debt, and that the aggregate thereof is fully covered by its indebtedness to its stockholders, depos-
25 itors and other creditors, and that it holds and owns no balance under the provision of section 5, art. 1, chap. 92 of General Statutes.

But said county court overruled said demurrer and objections, and held said response insufficient, and without hearing any evidence except as hereinafter shown, entered in said proceedings the following order:

Franklin County Court, Saturday, April 7, 1883.

COMMONWEALTH, for FRANKLIN COUNTY, *versus* FARMERS' BANK OF KENTUCKY. } Rule to List Property for Taxation.

In the matter of the summons and rule heretofore awarded herein, it appearing from the sheriff's report made to the clerk of this court that the Farmers' bank at Frankfort failed and refused after demand made to list its property, or any part thereof, for taxation for county purposes for the years 1877, 1878, 1879, 1880, 1881, 1882 and 1883, and the assessor and the sheriff being unable to ascertain of or to list said property, it is now ordered and adjudged that the demurrer of the Farmers' bank to this proceeding be overruled, and the demurrer of attorneys for the county to the response of said bank be sustained, and the bank still refusing to list or show further cause the clerk of the court is hereby ordered to list and assess the property of the Farmers' bank at Frankfort, situate in Franklin county, to wit, its notes, bonds, bills, money, choses in action and evidences of debt, after deducting therefrom its indebtedness (except the amount of its so-called liability to its stockholders) and $100 additional, said balance of property, as appears from the detailed statement furnished herein by the said bank, amounted in the year

1883 to the sum of $309,292; in the year 1882 $300,963.87; in the year 1881 to $293,393.87; in the year 1880 to $300,722.41; in the year 1879 to $289,719.51; in the year 1878 to $375,518.51; in the year 1877 to $568,020.22. The clerk will also list and assess the banking-house and real estate of said bank in Frankfort for each of said years at the valuation fixed thereon by said bank, as appears by its statements filed herein, viz: For the year 1883, $41,812; for the year 1882, $43,136.13; for the year 1881, $43,306.13; for the year 1880, $42,577.09; for the year 1879, $28,481.49; for the year 1878, $27,381.49; for the year 1877, $27,580.77. All the foregoing property to be assessed and taxed according to the amount of the *ad valorem* county levy tax for each of said years respectively, as appears by the record of this court. And the clerk will certify the foregoing lists to the sheriff of Franklin county for collection.

Plaintiff says that the "detailed statements" maintained and referred to in the foregoing order were furnished by the plaintiff and filed herein as evidence, and were filed and furnished
26 under and by virtue of the following written agreement made by and between the plaintiff and defendant, Franklin County, to wit:

"It is agreed that the statement of the condition of assets and liabilities of the Farmers' bank, at Frankfort office, or principal bank, for the years 1877–'78–'79–'80–'81–'82 and '83, as filed herein, may be read as evidence in the further trial — this proceeding, subject to all legal exception, and this was all the evidence offered or heard on the trial in the county court herein."

Said statement truly and correctly set forth the assets and property of the plaintiff situated in Franklin county in the several years mentioned, except as — the item of "banking-house and real estate." The true value of said banking-house and ground was estimated for each of said years at the sum of $16,240, and plaintiff owned no other real estate in either of said years situated in Franklin county. The excess of said value, over and above said sum of $16,240, consisted of the value of other real estate situated in other counties, and which had been purchased by the plaintiff in satisfaction of judgment in its favor, and this excess was inadvertently added to the value of said banking-house and ground.

Plaintiff says that the clerk of said Franklin county court made and certified a perpetual "assessment of the property" of the Farmers' Bank of Kentucky, pursuant to a judgment of said court, &c., a copy of which assessment and certificate is filed herewith as part hereof, marked (K); and said defendant, J. W. Gaines, as sheriff of Franklin county, — to act under said assessment, as certified to him, has levied on the plaintiff's banking-house and ground on which it stands, as hereinabove described, and also on certain office furniture of plaintiff, including safes, tables, chairs and bookcases, all of which are indispensable to plaintiff in carrying on its lawful and daily business, and said Gaines will, unless prevented, proceed to sell said real estate and personal property to satisfy said taxes. The entire record of said proceedings in said Franklin court, including the order made by said court on the 14th of March, 1883,

the summons and return thereon, the demurrer and response of plaintiff, the statement of the condition of said plaintiff for the years 1877 to 1883, inclusive, and agreement under which the same were allowed to be read as evidence and the judgment and order of said court made April 7, 1883, is filed herewith as part hereof, marked (A).

Plaintiff says that all the property and assets owned by it situated in Frankfort or in Franklin county in or during the years 1877 to 1883 inclusive are shown and set forth in said statements, corrected as to said item of "banking-house and real estate," that the aggregate amount of all its assets and property is and was during all of said years fully equalled and covered by its indebtedness to its stockholders, depositors and other creditors, and that it does not, and did not in either of said years own any balance whatever subject to taxation for either State or county purposes under the pro-
27 visions of chapter 92, article 1, section 5 of the General Statutes, or otherwise; that said county court of Franklin county had no jurisdiction to make or order to be made any assessment or list of plaintiff's said property for taxation for county purposes or for any purpose whatever, and no right or authority to assess, levy or collect an *ad valorem* tax on plaintiff's property at any rate of tax on the $100.00 worth of property for each or either of the years aforesaid; that said pretended assessment as made by said court or under its order was and is of and upon the capital stock of plaintiff and was and is a wrongful and unlawful attempt to tax said capital stock in violation of plaintiff's said charter and the amendments thereto.

Plaintiff says that it is without remedy at law; that it would sustain great and irreparable injury from a sale by the said sheriff of the property levied on by him as hereinbefore shown; that no previous injunction herein has been asked or applied for or refused by the court or any circuit judge.

Wherefore plaintiff prays that the defendants, J. W. Gaines, sheriff as aforesaid, and Franklin County and all others be enjoined and restrained from enforcing or attempting to enforce the levy made by said sheriff on plaintiff's property and from subjecting or attempting to subject any property of plaintiff to sale under said assessment or tax list, or otherwise to satisfy any taxes alleged or claimed to be due Franklin county on any property of plaintiff and from assessing or attempting to assess or collect any tax whatever on plaintiff's property for county or other purposes, and plaintiff asks judgment for its costs herein and for all other proper relief.

A. DUVALL,
For Plaintiff.

Thomas Rodman says he is president of The Farmers' Bank of Kentucky (plaintiff), and that he believes the facts stated in the foregoing petition to be true.

THOMAS RODMAN.

Sworn to before me by Thomas Rodman, this 6th day of September, 1883.

E. S. THEOBALD,
Notary Public.

Franklin Common Pleas Court.

FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
JOHN W. GAINES, Sheriff of Franklin County, and FRANKLIN County, Defendants.

The plaintiff applying for an injunction, and the defendants appearing by their attorney and waiving notice of the time or place of said application, and the judge of this court and the judge of the Franklin circuit court being absent from Franklin county, an injunction is granted and will be issued by the clerk of this
28 court as prayed for in the petition herein, upon the plaintiff's executing bond before the said clerk with good security, to the effect that the plaintiff will pay to the defendants such damage as they will sustain, not exceeding double the amount enjoined, if it be finally decided that the injunction ought not to have been granted September 6, 1893.

W. FRANKLIN, *C. F. C. C.*

Franklin County Court, Wednesday, March 14, 1883.

FRANKLIN COUNTY
versus
DEPOSIT BANK, FARMERS' BANK OF KENTUCKY, at Frankfort, Branch Bank of Kentucky, at Frankfort. } Information.

Upon motion of the county attorney it is ordered that a summons be issued by the clerk of this court against the Deposit bank, Farmers' Bank of Kentucky, at Frankfort, and Branch Bank of Kentucky, at Frankfort, returnable on the 2d day of April, to list or show cause why it shall not list their property in Franklin county for taxation for county purposes, as required by law.

Commonwealth of Kentucky to the sheriff of Franklin county:

You are commanded to summon the Farmers' Bank of Kentucky, at Frankfort, to appear before the Franklin county court on Monday, April 2, 1883, and list (or show cause why it shall not list) all the property of said bank situate in Franklin county, for assessment and taxation for county purposes for the years 1876, 1877, 1878, 1879, 1880, 1881, 1882, and 1883, as required by the laws of this State, and warn it that upon failure to answer or list said property, the same will be listed and twenty-five per centum added to the value thereof as a penalty for such failure and refusal, and its "chief officers or agents" will be proceeded against for contempt.

Witness our hand this 14th day of March, 1883.

——, ——.

The following endorsement was made on the foregoing summons:

Executed on Thomas Rodman, president of the Farmers' Bank of Kentucky, at Frankfort, by delivering to him a copy of the within summons March 17, 1883.

J. W. GAINES, *S. F. C.*,
By G. B. THOMPSON, *D. S.*

29 Franklin County Court.

FRANKLIN COUNTY
versus
FARMERS' BANK OF KENTUCKY. } Dem. and Response of Def't.

The defendant, Farmers' Bank of Kentucky, demurs and objects to this proceeding because the court has no jurisdiction of the subject-matter thereof, and no authority to require this bank to list, or show cause why it shall not list, its property, or any part thereof, in Franklin county, for taxation for county purposes.

And for response herein defendant says that by the terms of its charter, approved February 16, 1850, it was made the duty of the cashier of the principal banks on the first day of July, 1857, and on the first day of July in each succeeding year during the continuance of said charter, to pay to the treasurer of this Commonwealth fifty cents on each hundred dollars' stock held and paid for in said bank, which shall be in full of all tax or bonus. The defendant says its cashier did, on the first day of July in each succeeding year up to the present year, pay to said treasury fifty cents on each one hundred dollars of stock held and paid for in said bank, and defendant pleads and relies upon said payment in bar of this proceeding.

For further response, defendant says that in conformity with its charter it has purchased a lot of ground in the city of Frankfort, on which it has erected its banking-house and cashier's residence, all of which was and is necessary for the convenient transaction of its business and for the protection of its own property and the property of others entrusted to its care and keeping. Said real estate, and the buildings and improvements thereon, were paid for with the stock of defendant, and is still held by it and used for the purposes aforesaid, and for no other purpose or use.

Defendant says that all of its other property except a small amount of office furniture, not exceeding $—, consists of notes, bills, accounts, choses in action and evidences of debt, and that the aggregate thereof is fully balanced by its indebtedness to its stockholders, depositors and other creditors, and that it holds and owns no balance under the provisions of section 5, art. 1, chapter 92 of General Statutes.

A. DUVALL,
For Defendant.

Franklin County Court.

COMMONWEALTH, ETC.,
vs.
FARMERS' BANK OF FRANKFORT. } Agreement.

It is agreed that the statement of the condition (or assets and liabilities) of the Farmers' bank, at Frankfort office, or principal bank, for the years 1877, 1878, 1879, 1880, 1881, 1882, and 1883, as filed herein, may be read in evidence in the further trial of this proceeding, subject to all legal exceptions, and this was all the evidence offered or heard on the trial in the county court herein.

IRA JULIAN,
Attorney for Franklin County.
A. DUVALL,
Attorney for Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at the Frankfort Office, January 8th, 1877.

Assets.

Cash and stamps	$43,406.20
Suspended debt	31,011.67
Bonds and stocks	67,376.50
Notes and bills	770,863.32
Banking-house and real estate	27,580.77
Expense account	891.88
Due from banks	207,403.88
	$1,148,583.22

Liabilities.

Capital stock	$496,600.00
Circulation	19,001.00
Dividends unpaid	10,311.00
Premium, discount and interest	1,538.30
Deposits	569,091.26
Contingent fund and fund to pay losses	38,980.74
Due to banks	13,011.92
	$1,148,534.22

Frankfort, Ky., April 23, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at the Frankfort Office, January 7th, 1878.

Assets.

Cash and stamps	$30,383.42
Suspended debt	28,011.67

Bonds and stocks	42,500.00
Notes and bills	695,036.70
Stamped checks and books	116.85
Banking-house and real estate	27,381.49
Expense account	497.47
Due from banks	208,114.61
	$1,032,042.21

31 Liabilities.

Capital stock	$403,000.00
Circulation	18,510.00
Dividends unpaid	1,812.00
Premiums, discount and interest	945.04
Deposits	523,390.66
Fund to pay losses, etc.	61,841.25
Due to banks	22,543.26
	$1,032,042.21

Frankfort, Ky., April 23rd, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at the Frankfort Office, January 10th, 1879.

Assets.

Cash and stamps	$17,334.31
Suspended debt	22,681.10
Bonds and stocks	53,740.00
Notes and bills	544,577.48
Banking-house and real estate	28,481.49
Expense account	419.79
Due from banks	94,780.18
	$762,014.35

Liabilities.

Capital stock	$328,300.00
Circulation	17,914.00
Dividends unpaid	9,229.00
Premiums, discount and interest	777.54
Deposits	323,379.76
Contingent fund, and fund to pay losses	43,742.33
Due to banks	38,671.72
	$762,014.35

Frankfort, Ky., April 23, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at the Frankfort Office, January 10, 1880.

Assets.

Cash and stamps	$17,272.27
Suspended debt	35,492.31
Bonds and stocks	40,900.00
Notes and bills	459,602.67
Banking-house and real estate	42,577.09
Expense account	141.65
Due from banks	167,479.10
	$763,465.09

32 Liabilities.

Capital stock	$343,300.00
Circulation	16,822.00
Dividends unpaid	7,889.00
Premium, discount and interest	955.30
Deposits	318,699.05
Fund to cover losses, and contingent fund	53,439.80
Due to banks	22,348.19
Protest account	1.75
	$763,465.09

Frankfort, Ky., April 23, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at the Frankfort Office, January 10, 1881.

Assets.

Cash and stamps	$27,946.35
Suspended debt	23,478.69
Bonds and stocks	58,000.00
Notes and bills	595,451.62
Banking-house and real estate	43,306.13
Expense account	88.95
Due from banks	151,470.49
	$899,742.23

Liabilities.

Capital stock	$336,800.00
Circulation	16,454.00
Dividends unpaid	9,963.00
Premium, discount and interest	449.81
Fund to pay taxes	2,479.50
Deposits	397,890.57

Contingent fund, and fund to pay losses	57,410.97
Due to banks	78,284.38
	$899,742.23

Frankfort, Ky., April 23, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at Frankfort Office, January 9, 1882.

Assets.

Cash and stamps	$16,430.98
Suspended debt	21,598.00
Bonds and stocks	24,900.00
Notes and bills	631,200.88
Banking-house and real estate	43,136.13
Expense and probate account	55.79
Due from banks	60,400.53
	$797,722.31

33 Liabilities.

Capital stock	$347,200.00
Circulation	16,454.00
Dividends unpaid	10,346.00
Fund to pay State taxes and expenses	2,682.85
Premium, discount and interest	1,808.42
Deposits	325,648.80
Contingent fund and fund to cover losses	58,330.87
Due to banks	35,251.37
	$797,722.31

Frankfort, Ky., April 23, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

Statement of the Condition of the Farmers' Bank of Kentucky, at Frankfort Office, January 8, 1883.

Assets.

Cash and stamps	$22,144.29
Suspended debt	19,048.00
Bonds and stocks	27,050.00
Notes and bills of exchange	590,229.08
Banking-house and real estate	41,812.00
Expense account	91.38
Due from banks	54,131.14
	$754,555.89

Liabilities.

Capital stock	$350,200.00
Circulation	16,227.00
Dividends unpaid	9,815.00
Law expense	597.16
Due to depositors	251,143.03
Fund to cover losses, and contingent fund	59,410.40
Due to banks	64,244.34
Premiums, discount and expenses	440.46
Fund to pay State taxes	2,478.50
	$754,555.89

Frankfort, Ky., April 21, 1883.

GRANT GREEN,
Cashier Farmers' Bank of Kentucky.

34 Franklin County Court, Saturday, April 7, 1883.

COMMONWEALTH, for FRANKLIN COUNTY, *versus* FARMERS' BANK OF KENTUCKY. } Rule to List Property for Taxation.

In the matter of summons and rule heretofore awarded herein, it appearing from the sheriff's report made to the clerk of this court that the Farmers' bank at Frankfort failed and refused after demand to list its property or any part thereof for taxation for county purposes for the years 1877, 1878, 1879, 1880, 1881, 1882, and the assessor and sheriff being unable to ascertain the amount of or to list said property, it is now ordered and adjudged that the demurrer of the Farmers' bank to this proceeding be overruled and the demurrer of the attorneys for the county to the response of said bank be sustained, and bank still refusing to list or show further cause the clerk of this court is hereby ordered and directed to list and assess the property of the Farmers' bank at Frankfort situate in Franklin county, viz: Its notes, bonds, bills, money, choses in action and evidences of debt, after deducting therefrom its indebtedness (except the amount of its so-called liability to its stockholders) and $100 additional, said balance of property as appears from the detailed statement furnished herein by said bank amounted in the year 1883 to the sum of $309,292, in the year 1882 to $303,963.87, in the year 1881 to $293,393.87, in the year 1880 to $300,722.41, in the year 1879 to $289,719.51, in the year 1878 to $375,518.51, in the year 1877 to $568.020.23. The clerk will also list and assess the banking house and real estate of said bank in Frankfort for each of said years at the valuation fixed thereon by said bank as appears by its statements filed herein, viz: For the year 1883 $41,812, for the year 1882 $43,136.13, for the year 1881 $43,306.13, for the year 1880 $42,577.08, for the year 1879 $28,481.49, for the year 1878 $27,381.49, for the year 1877 $27,580.77. All the foregoing property to be assessed and taxed according to the amount of the *ad valorem* county levy tax for each of said years, respectively, as appears by

the records of this court. And the clerk will certify the foregoing lists to the sheriff of Franklin county for collection.

STATE OF KENTUCKY, *County of Franklin,* } *sct:*

I, James G. Crockett, of the county court of the county aforesaid, certify that the foregoing thirteen pages contained a true and correct copy of the proceedings of court in the matter of The County of Franklin *vs.* The Farmers' Bank of Kentucky, as on file and of record in my said office.

Given under my hand, this 28th day of August, 1883.

JAMES G. CROCKETT, *Clerk,*
By W. D. GRAVES, *D. C.*

35 Property listed with clerk of county court, Farmers' Bank of Kentucky; property assessed under judgment of county court for taxation for county purposes for the year—

1877	$595,601.00
1878	402,900.00
1879	318,201.00
1880	343,299.50
1881	336,700.00
1882	347,100.00
	$2,343,591.50

STATE OF KENTUCKY, *County of Franklin,* } *sct:*

I, James G. Crockett, clerk of the county court aforesaid, certify that the foregoing is a true copy of the assessment of the property of the Farmers' Bank of Kentucky as made by me as clerk aforesaid, pursuant to a judgment of said court, which judgment was entered on the 7th day of April, 1883, and is of record in my said office.

Given under my hand this 28th day of August, 1883.

JAMES G. CROCKETT, *C. F. C. C.,*
By W. D. GRAVES, *D. C.*

Franklin Common Pleas Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
J. W. GAINES, &c., Defendant. } Injunction Bond.

We undertake that the plaintiff, The Farmers' Bank of Kentucky, shall pay to the defendants, John W. Gaines, sheriff of Franklin county, and Franklin County Court, the damages, not exceeding $16,500, which they or either of them may sustain if it be finally decided that the injunction ought not to have been granted.

Witness my hand this 6th day of September, 1883.

FARMERS' BANK OF KENTUCKY,
By THOMAS RODMAN, *President.*
THOMAS RODMAN.

The Commonwealth of Kentucky to the sheriff of Franklin county, Greeting:

You are commanded to summon Franklin County Court and John W. Gaines, sheriff of Franklin county, to answer on the 1st day of next November term a petition in equity filed against them in the Franklin common pleas court by the Farmers' Bank of Kentucky, and warn them that, upon their failure to answer, the petition will be taken for confessed, or they will be proceeded against for contempt; and you will make due return of this summons on the 1st day of the next November term of said court.

36 Witness W. Franklin, clerk of said court, this 6th day of September, 1883.

W. FRANKLIN, *C. F. C. C.*,
By ROB'T B. FRANKLIN, *D. C.*

Executed on J. W. Gaines, sheriff of Franklin county, and R. A. Thompson, judge of Franklin county court, by delivering to each of them a copy of the within summons.

W. L. COLLINS, *S. F. C.*
JOHN L. TOBIN, *D. S.*

September 7, 1883.

At a court held on the 1st day of December, 1883—

The defendants filed a demurrer to the plaintiff's petition and the cause was submitted on said demurrer, and the court not being sufficiently advised, took time.

Franklin Common Pleas Court.

FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
J. W. GAINES, &c., Defendants. } Demurrer.

The defendants, J. W. Gaines and Franklin County Court, state that the petition herein is *in*sufficient in law and demurs to said petition.

IRA JULIAN,
JAMES A. VIOLET,
W. H. JULIAN,
For Defendants.

At a court held on the 17th day of May, 1884—

The demurrer to the petition being heard, the court overruled the demurrer and defendants except, and defendants by their attorney declining to answer, it is adjudged that the injunction in this cause be perpetuated, and the defendants are perpetually enjoined and restrained from further proceeding to collect the taxes mentioned in the action, and that plaintiff recover against the defendants its costs herein expended, to all of which defendants except and pray an appeal to the court of appeals, which is granted.

KENTUCKY:

Franklin Court of Common Pleas.

I, W. Franklin, clerk of the court aforesaid, do certify that the foregoing 31 pages and the above lines contain a full, true and complete transcript of the record and proceedings had in the cause therein mentioned.

Witness my hand this 13th day of June, 1884.

W. FRANKLIN, *C. C. P. Ct.*

37 Upon which transcript was endorsed the following statement:

Court of Appeals of Kentucky.

THE FRANKLIN COUNTY COURT and J. W. GAINES, Sheriff of Franklin County, Appellant-,
vs.
THE FARMERS' BANK OF KENTUCKY, Appellee. } Statement.

The judgment appealed from may be found on pages 31–32 of this record, and was rendered at the May term, 1884, of Franklin common pleas court.

Appeal granted below and no summons is desired.

IRA JULIAN,
Attorney for Appellants.

Afterwards at a court of appeals, begun and held for the Commonwealth of Kentucky at the capitol, in the city of Frankfort, on the 18th day of November, A. D. 1884, the following order was entered:

FRANKLIN COUNTY, &c.,
vs.
BANK OF KENTUCKY. } Franklin.

SAME
vs.
FARMERS' BANK OF KENTUCKY. } Franklin.

SAME
vs.
L. & N. R. R. Co. } Franklin.

Ordered that these causes be continued for oral argument.

Afterwards, at a court of appeals, held as aforesaid on the 23rd day of February, 1886, the following order was entered:

FRANKLIN COUNTY COURT
vs.
FARMERS' BANK OF KENTUCKY.

SAME
vs.
DEPOSIT BANK OF KENTUCKY.

SAME
vs.
BANK OF KENTUCKY.

These causes came on and were argued by D. W. Lindsey for appellee, W. H. Julian for appellants, and laid over for further argument.

Afterwards at a court of appeals, held as aforesaid on the 25th day of February, 1886, the following order was entered herein:

These causes were argued by Wm. Lindsay for appellees, John Rodman for appellant, and laid over.

Afterwards at a court of appeals, held as aforesaid on the 27th day of February, 1886, the following order was entered:

These causes came on and were argued by Alvin Duvall for Farmers' bank, and laid over for further argument.

Afterwards at a court of appeals, held as aforesaid on the 2nd day of March, 1886, the following order was entered:

These causes were argued by Ira Julian for appellant and submitted.

Afterwards at a court of appeals held as aforesaid on the 5th day of June, 1888, the following order was entered:

38 FRANKLIN COUNTY COURT, &c., Appellant,
versus
FARMERS' BANK OF KENTUCKY, Appellee.
— Appeal from Franklin Common Pleas Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that the said judgment be affirmed, which is ordered to be certified to said court. It is further considered that appellees recover of appellant its costs herein.

At the same time, to wit, June 5, 1888, the court, through Judge Caswell Bennett, delivered the following opinion, to wit:

THE FRANKLIN COUNTY COURT, &c., Appellant,
vs.
BANK OF KENTUCKY, Appellee.

THE SAME, Appellant,
vs.
THE FARMERS' BANK OF KENTUCKY, Appellee.

THE SAME, Appellant,
vs.
THE DEPOSIT BANK OF FRANKFORT, Appellee.

THE CITY OF FRANKFORT, Appellant,
vs.
THE BANK OF KENTUCKY, Appellee.

THE SAME, Appellant,
vs.
THE FARMERS' BANK OF KENTUCKY, Appellee.

The Franklin County Court, appellant, having assessed for county taxation all the corporate property in Franklin county of the appellees, including their notes, bonds, bills, money and choses in action, the appellees brought their separate actions of injunction against the appellant for the purpose of enjoining the collection of said tax.

The City of Frankfort, appellant, having assessed the real estate of the appellees within the corporate limits of Frankfort for the purpose of taxation, the appellees brought separate actions of injunction against the appellant for the purpose of enjoining the collection of said tax.

The lower court having perpetuated the appellees' injunction in each action, the appellants have separately appealed to this court. It is agreed that the cases may be heard together. They will be noticed in the order in which they stand.

39 FRANKLIN COURT
versus
THE BANK OF KENTUCKY.

The appellee, The Bank of Kentucky, was chartered in 1834 by an act of the legislature of this State. This incorporating act provides that the appellee shall have and keep its principal office of discount and deposit in the city of Louisville, and it shall be the appellee's duty to establish not less than four nor more than six branches, and one branch shall be located at the seat of government, "to aid in the management of the fiscal affairs of the State." The act authorizes the appellee to have "a capital stock of five millions of dollars, divided into shares of one hundred dollars each;" that the amount of capital that "shall be employed at the principal bank, and the several branches, shall be under the control of the president and directors of the principal bank;" that the appellee

shall have "full power and authority to acquire, hold and enjoy such real estate as shall be convenient for the transaction of its business, or which may be received in the discharge of any debt, or purchased in satisfaction of any judgment or decree in favor of the bank, or in the purchase of any property on which the said bank may have a lien." The 15th section provides:

"That it shall be the duty of the cashier of the principal bank on the first day of July, 1836, and on the first day of July in each succeeding year, during the continuance of this charter, to pay to the treasury of this Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus; *Provided*, that the legislature may increase or diminish the same, but at no time shall the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank."

In 1837 the legislature fixed fifty cents as the sum that the appellee should pay into the treasury on each one hundred dollars of its capital stock, "which shall be in full of tax or bonus." By the act of 1834 the appellee's charter was to continue in force until the first day of October, 1864.

The legislature, by an act approved February 15th, 1858, enacted that the chartered privileges and rights of the appellees should continue in force for twenty years from the first day of October, 1864. "But said extension of the charter of said bank shall be subject to the following restrictions and provisions."

1. It shall be subject to all the limitations, conditions and duties imposed upon it by the act of incorporation. * * * 3. After this act of extension takes effect the amount of circulation shall not be greater than the amount of capital actually paid in. * * * 4. The appellee shall establish a branch at the town of Columbus, Ky., with a capital of $150,000. * * * 5. The appellee shall, within a year from the 10th day of May, 1858, by a vote of a majority of its stockholders, determine whether it will accept the "proposed extension;" and if it determines to accept, it shall notify the governor of the Commonwealth of the acceptance by the certificate of its president and directors, and this act shall be in force from that date.

The 6th section provides that the appellee "shall pay annually to the commissioners of the sinking fund fifty cents upon each one hundred dollars of the contingent fund now held, or may hereafter accrue, to said bank over and above the amount now required to be retained by its charter."

By an act of the legislature, approved February 1, 1872, the appellee was authorized to purchase from the Commonwealth the stock which she owned in its bank. But the "bank shall annually, on the first day of January, pay into the treasury a tax of fifty cents on each share of one hundred dollars of its increased capital stock, which shall be in full of all tax or bonus on such increased capital stock."

The 5th section provides: "That the charter of the Bank of Kentucky be, and the same is hereby, extended twenty-five years."

The appellant's first contention is, that the legislature had no

constitutional power to exempt the appellee from the common burden of taxation except "in consideration of public services." It contends that the exemption of the appellee from all taxation, except fifty cents on each one hundred dollars of its capital stock, was not "in consideration of public services," and, therefore, void.

At the time the appellee was chartered, and for years afterwards, the Federal Government issued no paper currency. Banks and banking were the creatures of the respective States. It was the policy of this Commonwealth to charter banks, with authority to issue paper currency, based upon a gold and silver redemption upon the demand of the holder. The issue of these banks constituted, in the main the circulating medium in the Commonwealth for individual, commercial and public uses. While the aggregation of capital for banking purposes was, on the part of the projectors, for the purpose of individual gain, yet, the Commonwealth accepted the overture as auspicious to the purpose of furnishing a currency as stable as in the nature of things it could be made, for the private, commercial and public benefit of her citizens, also to aid her in the management of her fiscal affairs, which not only consisted in the providing of means to meet the ordinary administration of State affairs, but sometimes extended, at least might extend, to the borrowing of money to meet any extraordinary or unforeseen emergency. Therefore, we should hesitate to decide, were it material to decide the question, that the granting of the charter to the appellee, and the fixing of a specific tax of fifty cents on each share of its capital stock was not in consideration of public services. But the right of the State to grant the charter to the appellee and exempt it from the payment of all taxes, except fifty cents on each share of
41 its capital stock, rests upon the power of the State to make, for a valuable consideration, a valid and irrevocable contract.

The State of Kentucky, in the management and control of her affairs, in her relation to the other States, in her relation to the Federal Government, except in so far as certain powers are delegated by the Constitution of the United States, to the Federal Government, or one denied to the States, is sovereign by right. It is, by virtue of her sovereignty, that she has the power to contract. No binding contract can be entered into except by virtue of sovereign power. It is by this power that the State makes contracts with individuals; that she borrows money and gives her obligation for its payment. To deny a State the power to make binding contracts is a denial of its power as a sovereign. Possessing the sovereign power to contract, she exercises the right just as an individual exercises his. The individual, in exercising the right of contract, does not barter away his sovereignty; he for a valuable consideration, simply exercises it; for a valuable consideration coming to him from the other party to the contract he surrenders something and reserves something in its stead, which he deems as an equivalent. Whether the one or the other has in fact received an intrinsic equivalent for that with which he has parted is not the question. The fact that it is of more or less value, and deemed by him to be an equivalent, is all that is required to make the contract irrevoca-

bly binding. In thus contracting he does not surrender his sovereign power, he merely exercises it. Upon precisely the same principle the Commonwealth contracts.

If her contract is without any valuable consideration it is a *nudum pactum*, so is that of the citizen, but if there is a valuable consideration to support it, she is bound by it, not upon the idea that she has surrendered or bartered away her sovereignty, but that she has exercised it in accordance with what she deems to be for the best interest of her citizens. The State possessing the power to make, for a valuable consideration, a binding contract, she falls within that provision of the Federal Constitution that declares that she shall pass no law impairing its obligation. In respect to her contracts, she stands upon precisely the same footing that she does in reference to the contracts made between individuals—she shall pass no law impairing their obligation. In accordance with the foregoing views, the Supreme Court of the United States, ever since the Dartmouth College case (4 Wheaton, 518), have consistently held that the creation of a corporation, especially banks, by the legislature of a State, whereby it was agreed that the corporation, in consideration of paying to the State a specific tax or bonus, was to be released from the payment of all other taxes, constituted a binding contract from which the State could not recede without the consent of the corporation; unless the State, in making the contract, expressly reserved the power to alter or amend it; or unless there was a general law in force at the time of making the
42 contract which authorized the State, by subsequent legislation, to alter or amend it, and there was nothing appearing in the legislative act of the contracting parties showing that the general law should not govern it. State Bank of Ohio *vs.* Knoop, 16 Howard, 369; New Jersey *vs.* Yard, 95 U. S., 104; Farrington *vs.* Tennessee, 95 U. S., 679. This doctrine is so firmly rooted by the decisions of the Supreme Court of the United States, and so uniformly recognized by the courts of last resort of all the States, that a decision by us, holding the contrary, would be regarded as eminently sporadic.

Does the provision in appellee's charter and amendments declaring that the payment of fifty cents on each one hundred dollars of its capital stock "shall be in full of all tax or bonus," exempt the appellee from the payment of county or city taxes? The appellant contends that it does not.

It may be regarded as settled by the current of authority, and for the purpose of this investigation we will concede that it is so settled, that the appellee's capital stock and the shares of its stock are distinct things. That the capital stock is the money authorized to be paid in, and actually paid in, as the basis of the business of the bank and the means of conducting its operations. The bank cannot increase or diminish this capital stock without express authority to do so; for the reason that it constitutes a trust fund which is held by the appellee as trustee first, for the purpose of meeting and making good its liabilities; second, after discharging its obligations for the benefit of its stockholders. The shares of the capital stock

are represented by certificates. Each holder is a beneficiary to the extent of his ownership. But he cannot control or withdraw a dollar of the principal; that must remain as the basis of the appellee's business operations. The shareholder is entitled only to share in the profits. So, the capital stock and the shares of the capital stock are distinct things, and both may be taxed. So, also, the franchise—the right of the bank to exercise its powers in the prosecution of its business as a distinct right from its capital stock—may be taxed. So, also, its surplus earnings, being distinct from its capital stock, may be taxed. So, also, its real estate, if it does not represent its capital stock, but only its earnings which are not a part of its capital stock, may be taxed. Angell & Ames on Corporations, sections 556, 557; Bradley *v.* The People, 4 Wall., 459; National Bank *v.* Commonwealth, 9 Wall., 353.

If, when the State granted to the appellee its charter, she had been silent as to her right to tax it, she would have the absolute right to tax it, under the for-going heads, without being amenable to the objection of being guilty of imposing double taxation. Nor could it be successfully maintained that the appellee would not be liable to be taxed by the appellant, The County Court, under the act of the 17th of March, 1876, and by the applicant, the City of Frankfort, under its charter. But the State did not choose to be silent. It did speak. It said, that in consideration of the
43 appellee's paying into the treasury fifty cents on each $100 of its capital stock paid in without reference to its real value, such payments should be "in full of all tax or bonus." To say that this language has reference to the capital stock of the appellee, and not to the shares of its stockholders, or *vice versa*, or that it has no reference to the real estate of the appellee, acquired or used in its legitimate business, would be to torture the meaning of language. The State agrees that, in consideration of receiving fifty cents on each $100 of the appellee's capital stock paid in, the same shall be in full of all tax or bonus. It is conceded that this language binds the State to make no other assessment; and well may the concession be made, because, regarding the fifty cents in the light of a payment on the stock as capital stock proper or as the stockholder's shares, yet the contract says that that payment "shall be in full of all tax or bonus." Also regarding the appellee's real estate as a separate subject of taxation (and so is the capital stock and shares) yet the contract says that the payment of the fifty cents shall be in full of all taxation. If any part of appellee's property, its franchise, its capital stock, or the shares of its capital stock, or its real property, used in the operation of its business, is to be taxed in addition to the fifty cents, then it cannot be truthfully said that the payment of the fifty cents is "in full of all tax or bonus." As before said, it is conceeded that the terms of the contract bar the State from imposing any additional taxation; but it is contended that its terms do not bar the county and city from levying and collecting taxes for county and city purposes. In this position, counsel clearly overlooks the fact that the county and city are integral parts of the State, and that they cannot levy and collect taxes

without the authority of the State conferring that right upon them; so, the absurdity is presented, that the State contracts with the appellee, in consideration of its paying fifty cents on each one hundred dollars of its capital stock, to release it of "all tax or bonus"—this is the meaning of the language—and at the same time authorizes its local subdivisions to levy and collect other taxes off of the appellee. That is to say, that the State, by its contract with the appellee, deprives itself of the right to levy and collect other taxes off the appellee, but may, notwithstanding, authorize all of its subdivisions, if the appellee's property and business were distributed in all of them, to levy and collect other or additional taxes off of it. It seems that it would occur to one at first blush that such a procedure would be a palpable violation of the contract. "Under such a contract between individuals a doubt could not exist." The State, when she makes a contract, based upon a valuable consideration, stands upon precisely the same footing.

In The Bank of Cape Fear *vs.* Edwards, 5 Ired., 516, where the charter provided that the bank should pay annually into the treasury of the State twenty-five cents on each share of its stock owned by individuals, and that the bank should not be liable
44 to any further tax, it was held that the bank was liable to no other tax, State or county. See also, Farrington *vs.* Tennessee, 95 U. S., 679, and New Jersey *vs.* Yard, 95 U. S., 104, and the authorities there cited. Also, in the case of The Farmers' Bank (one of the present appellees) *vs.* Commonwealth and Greenup County, 6 Bush, 127, where the bank's charter provided that the annual payment into the State treasury of fifty cents on each one hundred dollars of the bank's capital stock "shall be in full of all tax or bonus," it was held that said provision exempted the bank from the payment of all other tax, whether State or county, including the bank's real estate, purchased for debt.

The appellant's next contention is that, if the appellee's charter exempted it from all taxation except that herein provided for, the same expired on the first day of October, 1864, and the act of the 15th of February, 1858, extending the charter for twenty years, created a new corporation, which the legislature, under the act of February 14, 1856, reserved the right to amend at pleasure; and that the act of the 17th of February, 1876, authorizing counties that levied and collected *ad valorem* taxes, to assess banks and other corporations within said counties, operated as a valid amendment of the appellee's charter to the extent of authorizing the collection of said taxes.

The act of the 14th of February, 1856, provides:

"SECTION 1. That all charters and grants of or to corporations, or amendments thereof, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

"SEC. 3. That the provisions of this act shall only apply to charters and acts of incorporation to be granted hereafter."

There is a broad distinction between the extension of a charter and the grant of a new one. An act which continues the life of a charter to a period beyond the time fixed in the charter for its expiration, and reserves the corporate organization, privileges, powers, duties and rights, is an extension of the charter. Thus extended, it is the same charter with a continued lease of life, under which the organization must be kept up; to which the company must look for its powers, privileges and rights; by which it is to be governed and controlled. The act of extension relates back to the date of the charter. The legislature and the company are presumed to contract for the extension with reference to that event, by which the respective rights of the contracting parties were agreed on, which agreement, in consideration of the continuous discharge of the obligations therein expressed, is to be continued beyond
45 the time first agreed on. See Angell & Ames on Corporation, section 780; Temple *vs.* Marshall, 1 Gillman, Illinois, 672; Exeter Bank *vs.* Rogers, &c., 7 New Hampshire, 32; Lincoln and Kennebec Bank *vs.* Richardson, 1 Greenleaf, 72.

Here the legislature, by the act of 15th of February, 1858, continued the chartered privileges and rights of the appellee twenty years from the first day of October, 1864. This extension did not have the effect of creating a new charter, but merely extended the life of the old one which was already in existence. Therefore the act of the 14th of February, 1856, does not apply, for the third section expressly provides that the act shall only apply "to charters and acts of incorporations to be granted" thereafter.

Conceding, however, that the act of 15th of February, 1858, creates a new charter, was it not the intention of the legislature, "plainly expressed," not in so many words, it is true, that the first section of the act of 1856 should not apply to it? Let us see. The act of 1858, as an additional consideration for the extension, provides that the appellee should establish a bank at Columbus, Ky.; that the amount of its circulation should not be greater than the amount of its capital stock actually paid in; that it should in addition to the fifty cents per share on its capital stock, pay annually fifty cents upon each one hundred dollars of its contingent fund; that it should be subject to all the limitations, conditions and duties imposed upon it by the act of incorporation; that it should formally accept the terms of extension. In addition to this the act of the 1st of March, 1872, authorized the appellee to purchase the stock that the State held in its bank, upon which it was to pay annually fifty cents upon each one hundred dollars, which was to "be in full — all tax or bonus" on such increased stock; also, her charter was "extended twenty five years." That the appellee, in addition to its former obligation, agreed to pay annually fifty cents on each hundred dollars of its contingent fund and increased capital stock for the period of twenty-five years; that it was to be exempt from all other taxation thereon during that period; that it was to establish another branch at Columbus, Ky.; that it was to restrict its circu-

lation; that its business involved a large capital, the profits of which were limited to six per cent. interest; that well-defined and permanent rules were essential to its successful management; that changes in its chartered privileges might hazard its success and safety, and render uncertain and precarious a business whose success depended upon a steady adherence upon the part of the State to its plighted faith. These considerations induce the belief that the acts of 1858 and 1872 were intended to continue in force an irrevocable contract.

FRANKLIN COUNTY COURT
versus
FARMERS' BANK.

The appellee was chartered in 1850, which was to continue in force until the — day of ——, 1880. By the 15th section of said charter the appellee was required to pay annually into the
46 State treasury fifty cents on each one hundred dollars of its capital stock, "which," according to said section, "shall be in full of all tax or bonus." By an act of the legislature, approved March the 10th, 1876, the appellee's charter was extended for the period of twenty-five years from and after the expiration of the time fixed in said charter. The principles announced in the Bank of Kentucky case, *supra*, apply to this case.

FRANKLIN COUNTY COURT
versus
DEPOSIT BANK OF FRANKFORT.

The appellee was chartered March 3d, 1863, to continue twenty years. There was no specific tax agreed on in the charter; but by the general law then in force the appellee was required to pay annually into the State treasury fifty cents on each one hundred dollars of its stock. It may be conceded that, as the appellee and the State, by the terms of the charter, made no contract in reference to taxation, the State would have the power to subject the appellee to the payment of such taxes as are imposed upon persons generally; and that the appellant would have the right to tax the appellee, under the law of 1876. But the legislature, by an act approved March 18th, 1871, declared "that the tax or bonus now paid by said bank in future shall be in full of all taxation; but this shall not be construed to apply to city tax upon real estate owned by it." By an act approved February 23d, 1882, the appellee's charter, together with the foregoing amendment, was extended and continued in force for twenty years from the 3rd of March, 1883.

The language of the amendment of 1871, "in full of all taxation," not only exempts the appellee from the payment of any other tax, whether county or State, but its meaning is made doubly clear by the succeeding clause, that excepts from the exemption city taxes on its real estate. Also, if the act of 1876, in the light of the act of 1856, should ordinarily be construed as repealing the exemption from taxation, so far as the appellant is concerned, the act of 1882

puts that matter at rest; for, by said act, the act of 1871 is expressly continued in force, thereby showing that it was the intention of the legislature that the act of 1876 should not apply to the appellees.

THE CITY OF FRANKFORT
versus
THE FARMERS' BANK OF KENTUCKY.

From what has been said in the case of The Franklin County Court *vs.* The Bank of Kentucky, it follows that the appellant, The City of Frankfort, has no authority to tax the real estate belonging to either of the appellees.

The judgment of the lower court in each case is affirmed.

47 COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 43 pages contain a true, full and complete transcript of the record and proceedings had in said court in the case wherein Franklin County Court, &c., are appellants and The Farmers' Bank of Kentucky is appellee, except the proceedings upon and the petition for rehearing, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office.

Done at Frankfort, Ky, this 13th day of May, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals

[SEAL.]

Exhibit B reads as follows:

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the 5th day of June, A. D. 1888, Chief Justice W. S. Pryor, Judges Joseph H. Lewis, W. H. Holt, and Caswell Bennett sitting.

THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal, of said City, Appellants,
vs.
THE FARMERS' BANK OF KENTUCKY, Appellee.

Be it remembered that heretofore, to wit, on the 9th day of August, A. D. 1884, the appellants, by their counsel, filed in the clerk's office of the clerk of the court of appeals, a transcript of a record in words and figures following, to wit:

KENTUCKY:

Franklin Court of Common Pleas.

Proceedings before the Hon. C. S. French, judge of the court aforesaid, at the court-house, in the city of Frankfort, on the 16th day of May, 1884.

Be it remembered that on the 21st day of November the following petition was filed in the clerk's office of the court aforesaid:

Franklin Court of Common Pleas.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort, T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal, of said City, Defendants. } Petition in Equity.

The plaintiff, The Farmers' Bank of Kentucky, states that by an act of the General Assembly of Kentucky, approved February 16, 1850, entitled "An act to incorporate the Farmers' Bank of Kentucky," it was incorporated under the name aforesaid, with power to contract and be contracted with, sue and be sued, etc., and with
"full power to acquire, hold, possess, use, occupy and enjoy,
48 and the same to sell, convey and dispose of all such real estate, goods, effects and chattels as shall be convenient for the transaction of its business, or which may be conveyed to said bank as surety for any debt, or purchased in satisfaction of any judgment or decree in favor of the bank, or in the purchase of any property on which said bank may have a lien," and by the 15th section of said act the cashier of the principal bank was required on the first day of July, 1851, and on the first day of July in each succeeding year during the continuance of said charter, to pay to the treasury of the Commonwealth fifty cents on each one hundred dollars of stock held and paid for in said bank, "which shall be in full of all tax or bonus."

Plaintiff says that by an act approved March 10, 1876, entitled "An act extending the charter of Farmers' Bank of Kentucky," the charter of said bank as amended was extended for the period of twenty-five years from its termination as therein provided, to wit, from the first day of May, eighteen hundred and eighty. Said acts and all amendments thereto are referred to as part hereof. Plain iff says that pursuant to the terms of said acts it has on the first day of July in each year since said bank went into operation, including the 1st of July, 1882, paid to the treasurer of this Commonwealth fifty cents on each hundred dollars of stock held and paid for in said bank, which payments, as plaintiff is advised, were and are in full of all tax or bonus.

Plaintiff states that soon after the adoption of said original act of incorporation, and in conformity with its terms and provisions, it organized and established said bank, which has ever since been and

is still in regular operation, doing the business authorized by its said charter; and for the location of its principal office of discount and deposit in the city of Frankfort, and for the safe and convenient transaction of its business, the plaintiff purchased a lot or lots of ground situated on the north side of Main street in said city, and erected thereon a building suitable for a banking-house, which building includes rooms suitable for and used as a residence of the cashier of said bank, and for one or more of its clerks, said building being of such a character and so arranged as to promote and secure the convenient transaction of the business of said bank and the safety and protection of the property and its control. Plaintiff says that neither said building nor the lot of ground on which it stands nor any part of either is used or was purchased or was intended for any other purpose or object than as stated, and all of said building and ground is convenient and necessary for the transaction of said business and for the safety and security of said property.

Yet, the plaintiff says, that notwithstanding the premises the defendant, The Board of Councilmen of the City of Frankfort, has recently, without authority of law, assumed and undertaken to levy a tax upon a part of the real estate hereinabove described,
49 and the defendant Kirtley, as deputy of defendant Todd, marshal as aforesaid, under the order and by the direction of the defendant, The Board of Councilmen of the City of Frankfort, has advertised in the newspaper published in said city, called the "Daily Yeoman," that he will on the first Monday in December, 1882, sell portions of said property belonging to said bank, which portions, as described by said marshal, are: (1) "Residence on Lewis street, used for cashier, value $5,000," to raise the sum of $75, besides his pretended costs and commissions amounting, as claimed, to $8 more; (2) "lot on Ann street, value $2,000, to raise the sum of $30, besides costs and commissions claimed, amounting to $3.50, making in all the sum of $116.50, *to* which the said defendant Kirtley will, unless prevented, attempt to realize by said sale, under the pretense that said last-named sum is due from plaintiff to said board of councilmen of the city of Frankfort as delinquent taxes on the property so advertised for sale for the year 1882. The part of said property described in said advertisement as "lot in Ann street, is part and parcel of the lot of ground on which said bank building stands, and was bought and is held, used and occupied, like all the rest of said property, for the safe and convenient transaction of the business of said bank, the same being necessary therefor, and is not and never has been held or used for any other purpose.

Plaintiff says that it does not owe said board of councilmen of the city of Frankfort the sum so claimed, or any part of it, for taxes on said property, or any part of it, for the year 1882 or for any other period, and that said Kirtley has no legal right or authority to make said proposed sale for the purpose stated, but unless enjoined and restrained will do so according to said advertisement, to the great and irreparable injury of the plaintiff. Plaintiff is without adequate remedy at law, and says that no injunction has been refused by the court, by any circuit judge or by any one else.

Wherefore plaintiff prays that the defendants, Todd and Kirtley and The Board of Councilmen of the City of Frankfort, and all others, be enjoined and restrained from selling said property or any part thereof for the purpose above stated or for any other purpose or on any other pretext whatever; that said injunction be made perpetual; that plaintiff have judgment for its costs and all other relief, general or special, to which it may be entitled.

A. DUVALL,
For Plaintiff.

Thomas Rodman says he is the president of the plaintiff, The Farmers' Bank of Kentucky, and is its chief officer, and that he believes the statements of the foregoing petition to be true.

THOMAS RODMAN.

Sworn to before me by Thomas Rodman, this — day of November, 1882.

E. S. THEOBALD,
Notary Public.

50 On the 21st day of November, 1882, the following summons issued on the foregoing petition:

Summons.

The Commonwealth of Kentucky to the sheriff of Franklin county, Greeting:

You are commanded to summon the Board of Councilmen of the City of Frankfort, T. J. Todd, marshal, and J. E. Kirtley, deputy marshal, of said city, to answer on the first day of the next May term a petition in equity filed against them in Franklin common pleas court by the Farmers' Bank of Kentucky, and warn them that upon their failure to answer, the petition will be taken for confessed or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next May term of said court. Witness W. Franklin, clerk of said court this 21st day of November, 1882.

W. FRANKLIN, *C. F. C. C.*,
By ROB'T FRANKLIN, *D. C.*

Sheriff's Return.

Executed on E. H. Taylor, Jr., mayor of the city of Frankfort, on T. J. Todd, marshal of the city of Frankfort, and John E. Kirtley, deputy marshal of the city of Frankfort, by delivering to each of them a copy of the within summons.

J. W. GAINES, *S. F. C.*

November 28, 1882.

Notice Filed and Motion for Injunction.

At a court held on the 23d day of November, 1882—
The plaintiff filed notice and moved the court to grant an in-

junction as prayed in the petition, which motion is laid over for hearing.

Franklin Court of Common Pleas.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal, of said City, Defendants. } Notice.

The defendants are notified that on the 4th day of the present November term, 1882, of the Franklin court of common pleas, the plaintiff will apply to said court to grant an injunction according to the allegations and prayer of the petition now on file in the clerk's office of said court, the style of which is shown by the caption above.

THE FARMERS' BANK OF KENTUCKY,
By A. DUVALL, *Its Attorney.*

51 *Sheriff's Return.*

E. H. Taylor, Jr., mayor of the city of Frankfort, not being found, executed on the Board of Councilmen of the City of Frankfort, by delivering to H. Rodman, attorney for city of Frankfort, by delivering to him a copy of the within notice.

November 23, 1882.

J. W. GAINES, *S. F. C.*

Executed on T. J. Todd, marshal of city of Frankfort, and J. E. Kirtley, deputy marshal of the city of Frankfort, by delivering to each of them a copy of the within notice.

November 22, 1882.

J. W. GAINES, *S. F. C.*,
By FRANK FRENCH, *D. S.*

At a court held on the 25th day of November, 1882, came the parties by their attorneys, and the defendants, The Board of Councilmen of the City of Frankfort, T. J. Todd, marshal, and J. E. Kirtley, deputy marshal, of said city, filed a demurrer to the petition, and the cause being heard on said demurrer, and on the motion of plaintiff for an injunction herein, and the court being advised, it is ordered that the demurrer be overruled, to which defendants except, and the clerk of this court will issue orders of injunction agreeable to the prayer of the petition, enjoining the defendants and each of them from selling the properties described in the petition, or in any part of it, for delinquent taxes claimed to be due, The Board of Councilmen of the City of Frankfort, until the further order of this court, upon the plaintiff executing to the defendants bond with good security, conditioned that the plaintiff will pay to the defendants such damages as they may sustain if it is finally decided that the injunction ought not to have been granted. To all of which the defendants except.

Franklin Common Pleas Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort, &c., Defendants. } General Demurrer.

The defendants and each of them come and demur to the petition herein and say the same is not sufficient in law.

HUGH RODMAN,
Attorney for the Defendants.

Franklin Common Pleas Court.

THE FARMERS' BANK OF KENTUCKY
versus
CITY OF FRANKFORT, &c. } Injunction Bond.

We undertake that the plaintiff, The Farmers' Bank of Kentucky, will pay to The Board of Councilmen of the City of Frankfort, Thos. J. Todd, marshal, and J. E. Kirtley, deputy marshal,
52 of said city, such damages as they or either of them may sustain if it is finally decided that the injunction in this action ought not to have been granted.

November 25, 1882.

THOMAS RODMAN.

At a court held on the 27th day of November, 1882—

The defendants moved the court to dissolve the injunction herein, and the matters of law arising on said motion and the demurrer to petition being heard, the court overruled both motion and demurrer, to which the defendant excepts.

The defendants The Mayor and the Board of Councilmen of the City of Frankfort filed their answer.

Franklin Common Pleas Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, T. J. Todd, Marshal, and J. E. Kirtley, Deputy Marshal, of said City, Defendants. } Answer.

Par. 1. The defendant, "The Board of Councilmen of the City of Frankfort," for answer herein says it denies that fifty cents on each hundred dollars of stock held and paid for in said bank is in full of all tax or bonus. It denies that the fifty cents alleged to have been paid to the treasurer of this Commonwealth on the 1st day of July in each year, and especially the year 1882, were and are in full of all tax or bonus. It denies that all of the building and ground described in the petition is necessary for the transaction of the business of said bank and for the safety and security of said property. It denies that it, notwithstanding the premises set forth in the

petition, has recently or without authority of law assumed and undertaken to levy a tax upon a part of the real estate described in the petition. It denies that the part of said property described in the advertisement set out in the petition as "lot on Ann street" is part and parcel of the lot of ground on which said bank building stands, was bought or is held, used and occupied like all the rest of said property for the safe and convenient transaction of the business of said bank. It denies that the same is necessary for the safe and convenient transaction of the business of said bank. It denies that the same is not and never has been held or used for any other purpose. It denies that the plaintiff does not owe it the sum so claimed by it and set out in the petition herein, or any part of it, for taxes on said property, or any part of it, for the year 1882, or for any other period. It denies that said Kirtley has no legal right or authority to make said proposed sale for the purposes stated.

Par. 2. Further answering, this defendant says that by virtue of an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to amend and reduce into one the several acts in relation to the city of Frankfort," approved March 10, 1869,
53 it has full power and authority to assess annually, levy and collect a tax not exceeding two dollars and fifty cents on the one hundred dollars worth of property *on all real estate within the limits of the city of Frankfort.* Said act and amendment thereto and all the ordinances of *the* this defendant are referred to and made part of this answer. It alleges that by regular assessment and levy there is due from plaintiff to it the taxes set out in the petition and the percentage due the defendants as marshal and deputy marshal of the city of Frankfort and the costs and penalties therein stated. It says the rate of taxation fixed by its order for the year 1882 was $1.50 on the hundred dollars valuation.

Having fully answered, it prays that the injunction granted herein be dissolved and that the petition be dismissed and for its costs and all proper relief to which it may be entitled.

HUGH RODMAN, *Att'y Def'ts.*

Hugh Rodman says he is the attorney for the board of councilmen of the city of Frankfort, and that its chief officer, to wit, the mayor, is absent from Franklin county, and he believes the foregoing to be true.

HUGH RODMAN,
City Attorney.

Sworn to and subscribed before me this the 27th day of Nov., 1883.

WM. CROMWELL,
Ex. F. C., Ky.

At a court held on the 16th day of May, 1884—

This day came the parties by their attorneys, and this cause being submitted upon the pleadings, exhibits and proof and the argument of counsel, and the court being now sufficiently advised, it is adjudged that the injunction heretofore granted by this court be and

the same is now hereby perpetuated, and the defendants and all others are perpetually enjoined and restrained from selling the property mentioned and described in the petition or any part thereof for delinquent taxes claimed to be due by the plaintiff to the board of councilmen of the city of Frankfort. And it is further adjudged that the plaintiff recover of the defendants its costs herein expended and for which it may have execution. To all of which the defendants except and pray an appeal to the court of appeals, which is granted.

The following are the depositions on file in this case:

The deposition of Grant Green, taken at the Farmers' Bank of Kentucky on the 3d day of May, 1884, by agreement, to be read as evidence in behalf of plaintiffs in case of Farmers' Bank of Kentucky against The Board of Councilmen of the City of Frankfort, and Bank of Kentucky against the same, now pending in the Franklin court of common pleas.

54 The defendant being of lawful age, and first duly sworn says:

Ques. 1. State your age, residence and occupation.

Ans. I am fifty-eight years old. I reside in Frankfort, Ky., and am cashier of the Farmers' Bank of Kentucky. Have been such cashier sixteen years.

2. Please state all you know concerning the purchase of the lot fronting on Ann street in Frankfort, now owned by Farmers' bank, state from whom it was purchased and when and why it was purchased.

Answer. In February, 1869, Mr. Haly proposed to build on the lot joining the Farmers' Bank lot, and fronting on Ann street, a character of building which the officers of the bank thought would be dangerous to the safety of the bank and its property, and they appointed a committee of the directors of the bank to investigate the matter, and that committee being satisfied that the safety of the bank and its property required that the bank should own the property, and they, with the approval of the board, purchased it on the 15th day of February, 1869, and the deed from John Haly and wife is recorded in the clerk's office of the Franklin county court.

3. You have before you a paper purporting to be a copy of the order appointing the committee referred to in your last answer, and also the report of the committee in relation to the purchase of said lot. Please state whether or not said paper contains a true copy of said order and report taken from the records of said bank, and make said copies a part of your answer.

Ans. The said paper is a true copy taken from the records of the bank, and I file the same as a part of my answer and mark it "G. G."

4. State whether any part of said lot has been sold or conveyed by the bank since its purchase, and if so, when and to whom, and the conditions upon which said sale was made.

Ans. In 1870, Oct. 17, the bank conveyed to Mrs. Emily H. Tub-

man thirty-five feet of the lot fronting on Ann street to be used and occupied as a part of church lot, for church building, and for no other purpose whatever. The deed from bank to Mrs. Tubman contains the following stipulation and condition: "It is distinctly understood and agreed that the lot aforesaid is to be used and occupied for a church building and for no other purpose whatever, and should said property ever be offered for sale or sought to be used for any other purpose than a church, the Farmers' bank is to have the option of purchasing twenty-four feet by thirty-five on the back end, at the same per square foot as the bank has received for it."

5. State whether or not, in your opinion, the grounds on which the bank buildings are erected, including the lot fronting on Ann street and also said bank buildings, are convenient and necessary for the transaction of the business of said bank and for the safety and security of the property and effects in its possession or under its control.

55 Ans. I think they are.

6. How long have you been occupying the bank building?

Ans. Sixteen years.

7. State whether the building's rooms suitable for and used as a residence for the cashier of said bank and for one or more of its clerks are of a character and so arranged as to secure the convenient transaction of the business and the safety of the property of the bank.

Ans. They are.

8. State whether or not the said lot on Ann street bought from Haly is held or used or occupied as the rest of said bank property for any other purpose than as you have already stated.

Ans. It is not.

9. Please state whether or not a residence for the cashier is necessary to the safety of the bank in view of the limited number of the police force of said city.

Ans. I believe that is necessary in the town of Frankfort and the greatest safety the bank could have.

Cross-examined:

1. How many feet front on Main street and how many feet deep on Lewis street is the bank property?

Ans. It is about 78 feet front on Main street and running back on Lewis 192 feet, the lot I mean.

2. How many rooms does the bank building contain?

Ans. It contains 14 rooms, including kitchen and servants' room—that is, the whole building.

3. How many of those rooms are used strictly for banking purposes?

Ans. Three rooms for banking purposes.

4. What is the bank building and the lot upon which it is situated worth?

Ans. The whole property, including lot on Ann street, is $16,240, estimated.

5. How many feet front and how many feet deep is the lot on Ann street?

Ans. The lot on Ann street is 53½ feet front and runs back 99 feet to the line of the lot originally owned by the bank.

6. What is the separate value of the lot on Ann street?

Ans. I suppose it is worth $2,000. I have no idea what it is worth.

7. What is the lot used for by the bank?

Ans. For no especial purpose. It is used as a protection and guard to the bank building.

8. What is the value of the residence part of the building?

Ans. It is worth about $14,000.

9. In what way is the lot upon which the bank building stands and the lot on Ann street necessary for the transaction of the business of the bank or its safety or protection?

56 Ans. The lot on Ann street is so close to the bank building that buildings placed upon that lot, if owned by other parties, would endanger the loss of the bank building by fires and the outhouses, etc., necessary which might be erected on the lot would make such nuisances that the cashier or other officers who occupy the building would be greatly annoyed, and if they occupied the bank building would have to do so with great discomfort, and besides robbers would have a safe position from which they could approach the bank for the purpose of robbing and breaking into the bank.

Examined by attorney for Bank of Kentucky:

No. 1. Are you acquainted with the lot of ground on the west side of St. Clair street, in the city of Frankfort, owned by the Bank of Kentucky, fronting on said street and bounded on the north by the court-house lot and on the south by the property of the Catholic church, and on which is erected the banking building of said plaintiffs? If so, state how long you have known the same and for what purpose said property has been used and occupied and is now used and occupied.

Ans. I am acquainted with the lot mentioned and have known it for 33 years, and it has been occupied and used by the bank ever since I have known it.

2. Please state if you know the size of the front of said lot on St. Clair street and how the lot is occupied by the building thereon.

Ans. I don't know the size of the front, but I guess about 70 or 75 feet. The whole of the lot front is occupied by the bank building with the exception of an alley of about 3 feet.

3. Are you acquainted with the arrangement and use of said building?

Ans. I am not well acquainted with it, but I know the front part of the building is occupied by the banking-room, president and directors' room, the vault and the cashier's room back of vault, and above president's room and directors' room is occupied by clerks

of the bank, and the rest of the house is occupied by residence of cashier, and the front of the residence only presents one room and the hall for entrance to residence.

4. State whether or not said building is of such character and so arranged as to promote and secure the convenient transaction of the business of said bank and the safety and protection of its property and that of the deposits and other property under its control.

Ans. I think it is or does.

5. State whether or not in your opinion such a residence for the cashier and arrangements for sleeping-rooms for clerks adjoining and surrounding the banking-rooms and vault of the bank, and their use for such purposes, is a proper and necessary safeguard in the city of Frankfort for the protection of the property and business of said bank.

57 Ans. I think it is necessary to the protection, and the greatest protection it could have.

6. State if the banking-room, president and directors' room and cashier's room, as erected in said building, are suitable for and necessary to the convenient transaction of the business of said bank.

Ans. I think they are.

Cross-examined by attorney for defendants:

1. How many rooms in the bank proper, and how many rooms in the cashier's residence?

Ans. I think there are three or four rooms used for the transaction of the business of the bank, and I do not know how many other rooms there are in the house.

2. What is the value of the property?

Ans. I don't know what it is really worth, but I suppose from $10,000 to $15,000.

GRANT GREEN.

The following is Exhibit "G. G.," filed with deposition of Grant Green:

FARMERS' BANK OF KENTUCKY,
FRANKFORT, *February* 8, 1869.

At a meeting of the board of directors of the bank this day the following order was made, to wit: "A. J. James and G. W. Craddock are appointed a committee to examine and report on the propriety of purchasing Haly's lot, adjoining the bank property.

(Signed) "THOS. N. LINDSEY, *President.*"

And afterwards, on the 16th day of February, 1869, the following order was made (the following members of the board being present: Thos. N. Lindsey, president; A. J. James, G. W. Craddock, J. G. Dudley and S. B. Churchill), viz: "The committee appointed to confer with John Haly in relation to the purchase of the lot adjoining the bank reported that they had examined the lot, and were satisfied that the proximity of the same to the bank buildings was such that the buildings proposed to be placed upon said lot by

Haly would not only endanger the security of the bank buildings from fire, but the privies which it would be necessary for him to make near the bank would create intolerable nuisances to any one who might occupy the bank building. They therefore purchased said lot at the price of $2,500 cash, and received a deed from Haly and wife for the same, which is accepted and ordered to be recorded. And the cashier was ordered to settle with Haly for the same. The cashier is also directed to have the fence replaced on Ann street, upon the most reasonable terms it can be done, by using the old materials and such new materials as will be necessary.

(Signed) "T. H. LINDSEY, *President.*"

58 I hereby certify that the two foregoing orders are true copies from the records of the Farmers' Bank of Kentucky as they appear upon the minutes of the proceedings of the board at the dates named.

Given under my hand as cashier of the Farmers' Bank of Kentucky this 30th day of April, 1884.

GRANT GREEN, *Cashier.*

Also the deposition of E. L. SAMUEL, taken at the same time and place, and on the same behalf, who, being of lawful age and first duly sworn, says:

1. State your age, residence and occupation.

Ans. I am 53 years of age, and am cashier of the Branch Bank of Kentucky at Frankfort, Ky.

2. Are you acquainted with the lot of ground on the west side of St. Clair street owned by the plaintiff, The President, Directors and Company of the Bank of Kentucky? If so, describe the same by boundaries, and also the buildings erected thereon, and state for what purposes the said lot and buildings are used exclusively.

Ans. I am acquainted with ground and have known it for fifty years. I knew it before the banking buildings were erected on it. It is bounded on the east by St. Clair street, on the west by an alley, on the north by the court-house lot, on south by property of the Catholic church. The building is a two-story brick building occupying front of the whole lot except an alleyway running back the depth of the building. The right wing and the main center of the building is occupied for banking purposes, and the left wing for an entrance to the cashier's residence. The vault is as near the center of the building as possible, and is surrounded by rooms used for banking purposes and above by the cashier's family and clerks of the bank in order to afford as much protection to the vault of the bank as possible. The lot and buildings are used for banking purposes, residence of cashier, and sleeping apartments of the clerks.

3. You have stated that you are the cashier of the bank. Do you occupy the residence of such building; if so, how long have you occupied it?

Ans. I do occupy it, and have done so for eleven years.

4. State whether the said lot and building, including the portions thereof which you have stated are used for cashier's residence and

rooms for one or more clerks, are of a character and so arranged as to secure the convenient transaction of the business of said bank and the safety and protection of its property and the property under its control and custody.

Ans. I think they are well arranged for those purposes and are necessary thereto.

5. If you know, state for what purpose the said lot was purchased and the building thereon erected by the plaintiff, and for what purpose they have been solely used by the plaintiff.

59 Ans. It was purchased by the Bank of Kentucky for erecting banking-house to carry on banking business in city of Frankfort, and they did erect thereon a banking-house, and in which they have carried on the banking business since 1840 to the present day. My father, being president of the bank at the time it was built, supervised its erection.

6. State whether or not, in your opinion, the rooms in said building used for banking purposes are more than sufficient for the convenient and proper transaction of the business of the bank, and whether or not in your opinion such a residence for the cashier and rooms for clerks adjoining and surrounding the banking-rooms and vault of the bank, and their use for such purposes, is a proper and necessary safeguard for the protection of the property of said bank and that entrusted to its custody in the city of Frankfort?

Ans. I think the rooms used for banking purposes are not more than sufficient to transact the business. I think the cashier's residence and rooms for clerks are a proper and necessary safeguard for the protection of the property of said bank and that entrusted to its custody.

Cross-examined by attorney for defendants:

1. How many rooms in the whole building?

Ans. Eleven rooms.

2. How many are used strictly for banking purposes?

Ans. Three rooms, occupying two-thirds of the front.

3. How many clerks has the bank, and how many sleep in the building?

Ans. The bank has three clerks, one of whom sleeps in the building.

4. What is the property valued at?

Ans. At $10,000, and is in the city limits.

E. L. SAMUEL.

Also the deposition of THOMAS RODMAN, taken at the same time and place and on the same behalf, who, being of lawful age and first duly sworn, says:

1. State whether or not in your opinion the grounds upon which the bank buildings are erected, including the lot fronting on Ann street, and also said bank buildings are convenient and necessary for the transaction of the business of said bank and for the safety

and security of the property and effects in its possession or under its control.

Ans. I think that they are. The reasons are that the buildings put upon the vacant lot would endanger the bank as to fires, robbers, burglars and nuisances.

2. State whether the buildings include rooms suitable for and used as a residence for the cashier of said bank and for one or more of its clerks are of a character and so arranged as to secure
60 the convenient transaction of the business and the safety of the property of the bank.

Ans. I think so, for the reason that the cashier or its employés ought to sleep in the bank building for its protection.

3. State whether or not the said lot on Ann street, bought from Haly, is held or used or occupied as the rest of said bank property for any other purpose.

Ans. It is not. The bank gets no revenue from it, and the bank does not use it except for purposes of protection.

4. Who was the cashier of this bank prior to and up to the time of Mr. Green's appointment?

Ans. John B. Temple. He was appointed in 1850, and remained until May, 1868.

Cross-examined by attorney for defendant:

1. How many rooms in bank building?

Ans. There are twelve rooms, besides kitchen and servants' room and including bank-rooms. T front rooms on Main street are used for banking purposes.

2. What is the bank proper'_ worth?

Ans. Sixteen thousand dollars.

3. How many feet front is the bank property on Main street and how many on Lewis street?

Ans. About seventy-eight feet on Main street and about one hundred and ninety-two on Lewis street.

4. How many feet is the building proper on Main and Lewis streets?

Ans. Sixty feet on Main and ninety-five on Lewis street.

5. What are the dimensions of the lot on Ann street?

Ans. About fifty-five by ninety-nine feet, and is worth about $2,500, and is used only for the protection of the bank.

Examined by attorney for Bank of Kentucky:

1. Are you acquainted with the property owned and occupied by the Bank of Kentucky on the west side of St. Clair street, in the city of Frankfort?

Ans. I am.

2. I call your attention to a description of said property as given by Mr. Samuel in his deposition, this day taken; please state whether that description of the property is accurate so far as your knowledge is concerned.

Ans. I think that is a very fair description of the property.

3. Please state whether or not the portion of said property used for banking purposes is more than necessary for the convenient dispatch of the business of said bank.

Ans. I think it is not.

4. Please state whether or not the arrangement of said building, as to the cashier's residence and clerk's apartments and their
61 use for such purposes, are proper and necessary to the security of said bank, its property and that of others entrusted to its custody.

Ans. I think they are, as it is necessary that they should live in the bank as a protection from fire and burglars.

5. How long have you lived in Frankfort?

Ans. Twenty years.

Cross-examined by defendant's attorney:

1. How many rooms in the building?

Ans. Ten or twelve I think.

2. How many are used strictly for banking purposes?

Ans. Two, so far as I know, which occupy two-thirds of the front. There may be more. The property is worth $10,000 or $12,000.

THOMAS RODMAN.

GRANT GREEN recalled.

Mr. GRANT GREEN, being recalled, is asked the following by attorney for Farmers' bank:

1. Please state if you know who was president of Farmers' bank at time of its organization up to and including year 1858.

Ans. John H. Hanna was president during the time named and for some time afterwards.

2. Do you know anything concerning the conveyance of the lot fronting on Ann street by John H. Hanna to John B. Temple on 1st of April, 1858?

Ans. I know nothing except what is shown by the records of the county court clerk's office, which shows, as I understand, the record of the conveyance from Hanna to Temple in Deed Book No. 6, dated April 1st, 1858. Being further interrogated, says that said Temple conveyed to John Haly by deed dated June 15, 1867, recorded in Deed Book No. 9, page 230, Franklin county court clerk's office, all of which is shown by the records therein. I will file copies of said deeds, marked Nos. 1 and 2. I will also file copy of the deed from John Haly to the bank as part of this deposition.

GRANT GREEN.

Deed No. 1.

This indenture made this 1st day of April, 1858, between John H. Hanna and Mary L. Hanna, his wife, of the city of Frankfort and State of Kentucky, of the one part, and John B. Temple, of the place aforesaid, of the other part, *witnesseth:* That said John H. Hanna in consideration of the sum of thirteen hundred dollars in

hand paid, *to* the receipt of which is acknowledged, hath granted, bargained and sold, and by these presents doth grant, sell and convey unto the said John B. Temple a certain parcel of land in the city aforesaid and bounded as follows: Beginning at a point eighty feet from the corner of a brick house erected by John H. Hanna on the corner of Ann and Montgomery streets, that is, the corner next to Montgomery street, running at right angles with Ann
62 street ninety-nine feet, or to the line of the lot now owned by Farmers' Bank of Kentucky; thence with the line of the said bank lot about eighty-eight and a half feet to the corner of the lot on which the Christian or Reform church is erected; thence with the line of said church to Ann street; thence with said street to the beginning; together with all and singular the premises and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the land hereby conveyed, with its appurtenances, unto the said John B. Temple, his heirs and assigns forever; and the said John H. Hanna, for himself, his heirs, executors and administrators, the aforesaid tract or parcel of land and premises unto the said John B. Temple, his heirs and assigns, against the claim or claims of all and every person or persons whatsoever, claiming or to claim the same, doth and will forever warrant and defend, by these presents; and, further, that the said John H. Hanna is seized of a sure, lawful and indefeasible title in and to the said parcel of ground and appurtenances, and hath lawful right to sell and convey the same. And the said Mary L. Hanna, wife of said John H. Hanna, doth hereby relinquish her right of dower in and to the tract of land and appurtenances hereinbefore described.

In testimony whereof the parties of the first part have hereunto set their hands and seals the day and date first herein.

The word title interlined before signed.

[L. S.] JOHN H. HANNA.
[L. S.] MARY L. HANNA.

STATE OF KENTUCKY, *sc:*

I, Alexander H. Rennick, clerk of the county court of the county of Franklin, do certify that the foregoing deed from John H. Hanna and Mary L. Hanna, his wife, to John B. Temple was produced to me in my office on the 1st day of April, 1858, and was acknowledged by the said John H. Hanna to be his act and deed, and on the 3d day of April, 1858, was acknowledged by Mary L. Hanna to be her act and deed, and the same, with this certificate, have been truly recorded in my office.

Witness my name as clerk, this 5th day of April, 1858.

A. H. RENNICK, *C. F. C. C.*

A copy.
Attest: —— ——, *Clerk*,
By —— ——, *D. C.*

Deed No. 2.

This indenture, made the 15th day of June, in the year 1867, between John B. Temple, of the county of Franklin, city of Frankfort, and State of Kentucky of the one part, and John Haly, of the same city and State, of the second part, *witnesseth:* That
63 the said John B. Temple, in consideration of twenty-five hundred dollars in hand paid, the receipt of which is acknowledged, hath granted, bargained and sold, and by these presents doth sell and convey unto John Haly, his heirs and assigns, a certain lot or parcel of ground in said city of Frankfort, bounded as follows: Beginning at a point on Ann street, eighty feet from Montgomery street, as fixed by the house erected by John H. Hanna, running thence at right angles with Ann street ninety-nine feet, or to the line of the lot now owned by the Farmers' Bank of Kentucky; thence with the line of said bank lot about eighty-eight and a half feet, to the corner of the lot on which the Christian or Reform church is erected; thence with the line of said church lot to Ann street; thence with Ann street to the beginning, being the same lot conveyed by John H. Hanna and wife to said Temple by deed bearing date 1st day of April, 1858. To have and to hold the land hereby conveyed, with all appurtenances thereto attached, unto the said John Haly, his heirs and assigns, against the claim or claims of all and every person or persons whatever, claiming or to claim the same, doth and will forever warrant and defend, by these presents. In witness whereof the said John B. Temple, together with Blandina H. Temple, his wife, who hereby relinquishes her right of dower in and to the lot or parcel of ground hereby conveyed, have hereunto set their hands and seals the day and date first herein written.

JOHN B. TEMPLE.
BLANDINA H. TEMPLE.

STATE OF KENTUCKY, *sc:*

I, Alexander H. Rennick, clerk of the county court for the county of Franklin, do certify that the foregoing deed was produced to me in my office on the 15th day of June, 1867, with a two-dollar-and-fifty-cent United States revenue stamp attached thereon, and was acknowledged by John B. Temple and Blandina H. Temple, his wife, the grantors, to be their act and deed, and the same with this certificate have been truly recorded in my office.

Witness my name as clerk this 22d June, 1867.

A. H. RENNICK, *C. F. C. C.*

A copy.
Attest: JAMES G. CROCKETT, *Clerk,*
By W. D. GRAVES, *D. C.*

Deed No. 3.

This indenture made this 15th day of February, 1869, between John Haly, of the county of Franklin and city of Frankfort, Ky.,

of the one part, and the Farmers' Bank of Kentucky, of the second part, *witnesseth:* That the said John Haly, for and in consideration of the sum of twenty-five hundred dollars ($2,500) in hand paid, the receipt of which is hereby acknowledged, hath granted, bar-
64 gained and sold, and by these presents doth sell and convey unto the said Farmers' Bank of Kentucky and its assigns a certain lot or parcel of ground in said city of Frankfort, bounded as follows, to wit: Beginning at a point on Ann street, eighty feet from Montgomery street as fixed by the house erected by John H. Hanna, running thence at right angles with Ann street ninety-nine feet or to the line of the lot now owned by the Farmers' Bank of Kentucky; thence with the line of said bank lot about eighty-eight and a half feet to the corner of the lot on which the Christian or Reform church is erected; thence with the line of said church lot to Ann street, and thence with Ann street to the beginning; being the same lot conveyed by John B. Temple and wife to the said John Haly by deed bearing date the 15th day of June, 1867. To have and to hold the land hereby conveyed, with all the appurtenances thereunto attached, unto the said Farmers' Bank of Kentucky and its assigns forever. And the said John Haly for himself, his heirs, executors and administrators, the aforesaid lot or parcel of ground and appurtenances, unto the said Farmers' Bank of Kentucky and its assigns, against the claim or claims of all and every person or persons whomsoever, claiming the same, will forever warrant the title.

In witness whereof the said John Haly, together with Hannah Haly, his wife, who hereby relinquishes her right of dower in the lot or parcel of ground hereby conveyed have hereunto set their hands the day and date first herein written.

JOHN HALY.
HANNAH HALY.

STATE OF KENTUCKY, *sc:*

I, Alexander H. Rennick, clerk of the county court for the county of Franklin, certify that the foregoing deed was produced to me in my office on the 15th day of February, 1869, with $2.50 of United States revenue stamps attached thereon, and was acknowledged by John Haly and Hannah Haly, his wife, to be their act and deed, and the same with this certificate have been truly recorded in my office.

Witness my name as clerk this 16th February, 1869.

A. H. RENNICK, *C. F. C. C.*

A copy.
Attest: JAS. G. CROCKETT, *Clerk*,
By W. D. GRAVES, *D. C.*

Deed No. 4.

This indenture made this 17th day of Oct., one thousand, eight hundred and seventy, between the Farmers' Bank of Kentucky, of the county of Franklin and State of Kentucky, of the first part, and

Emily H. Tubman, of the city of Augusta and the State of Georgia, of the second part, witnesseth: That for and in consideration of the sum of twelve hundred and sixty dollars in hand paid, the receipt of which is hereby acknowledged, the party of the first part doth bargain, sell, convey, release and grant unto the
65 party of the second part and her heirs and assigns all that certain lot of ground in the city of Frankfort and State of Kentucky, on Ann street in said city: Beginning at the south corner of the lot on which the Christian church stands; thence with Ann street southwardly thirty-five feet to a stake; thence at right angles with Ann street in the direction of the bank building to a stake at a point thirty-five feet from the most westwardly corner of the Christian Church lot; thence thirty-five feet to the westwardly corner of said church lot; thence to the beginning; the lot sold fronting thirty-five feet on Ann street and running back at that width to the line of the rear part of said church lot; together with the rights, privileges and appurtenances thereto belonging. To have and to hold the property hereby conveyed to the party of the second part and her heirs and assigns forever. And the said party of the first part covenants that it will warrant and forever defend the property hereby conveyed. But it is distinctly understood and agreed that the lot of *said* is to be used and occupied for a church building and for no other purpose whatever, and should said property ever be offered for sale or sought to be used for any other purpose than a church, the Farmers' bank is to have the option of repurchasing twenty-four feet by thirty-five on the back end at the same per square foot as the bank has received for it.

In testimony whereof the party of the first part hereunto sets its hand and seal the day and year first above written by its president and corporate seal, and said Emily H. Tubman also signs her name hereto.

THE FARMERS' BANK OF KENTUCKY,
[SEAL.] By T. N. LINDSEY, *Pres't.*
E. H. TUBMAN.

Attest as to E. H. Tubman:
L. A. THOMAS.

COMMONWEALTH OF KENTUCKY, }
Franklin County, } *sct:*

I, James G. Crockett, clerk of the county court of the county aforesaid, do certify that this deed from the Farmers' Bank of Kentucky to Emily H. Tubman was on the 20th day of October, 1870, produced to me in my office, duly stamped according to the act of Congress, and with the corporate seal of said bank affixed, and acknowledged by the said Thomas N. Lindsey, president of said Farmers' bank, to be his act and deed, which is ordered to be recorded. Whereupon said deed and this certificate have been truly admitted to record in my office.

Given under my hand this 27th day of October, 1870.

JAS. G. CROCKETT, *C. F. C. C.*

A copy.
Attest:

JAS. G. CROCKETT, *Clerk,*
By W. D. GRAVES, *D. C.*

66 STATE OF KENTUCKY, *Franklin County,* } *sct:*

I, W. H. Posey, examiner for Franklin county, Kentucky, certify that the foregoing depositions by Grant Green, E. L. Samuel and Thomas Rodman, were taken before me at the time and place stated in the caption, that each was duly sworn by me before giving his deposition; that the deposition of each was written by me in the presence of each, respectively, and read to and subscribed by each, respectively, in my presence; that A. Duvall, attorney for Farmers' Bank of Kentucky, D. W. Lindsey, attorney for Bank of Kentucky, and Hugh Rodman, attorney for defendants, were present at the examination.

Given under my hand as examiner of aforesaid this May 10th, 1884.

W. H. POSEY,
Examiner for Franklin County, Ky.

KENTUCKY:

Franklin Common Pleas Court.

I, W. Franklin, clerk of the court aforesaid, do certify that the foregoing fifty-eight pages and the above lines contain a full, true and complete transcript of the record and proceedings had in the cause therein mentioned.

Witness my hand this 9th day of August, 1884.

W. FRANKLIN, *C. F. C. C. C.,*
By ROB'T B. FRANKLIN, *D. C.*

Upon which transcript was endorsed the following statement:

THE BOARD OF COUNCELMEN OF CITY OF FRANKFORT, Appellants, *versus* THE FARMERS' BANK OF KENTUCKY, Appellee. } Statement.

The judgment appealed from was rendered on the 16th day of May, 1884, at the May term of the Franklin common pleas court, and can be found on page 19 of this transcript.

No summons desired.

SAME, Appellants, *versus* SAME, Appellee. } Assignment of Errors.

The appellants assign for errors the following: The court below

erred in rendering the judgment appealed from herein, and found on page 19 of the transcript.

HUGH RODMAN,
City Attorney, for Appellants.

67 Afterwards, at a court of appeals, begun and held for the Commonwealth of Kentucky at the capitol in the city of Franklin, on the 11th day of October, A. D. 1884, the following order was entered:

BOARD OF COUNCILMEN OF CITY OF FRANKFORT *vs.* THE FARMERS' BANK OF KENTUCKY. } Franklin.

SAME *vs.* PRESIDENT, DIRECTORS, &C, OF THE BANK OF KENTUCKY. } Franklin.

Ordered that these causes be continued for oral argument.

Afterwards, at a court of appeals held, as aforesaid, on the 4th day of March, A. D. 1886, the following order was entered:

These causes coming on to be heard, were argued by D. W. Lindsey for the Bank of Kentucky, A. Duvall for the Farmers' Bank, and Wm. Lindsay for appellant, and submitted.

Afterwards, at a court of appeals held as aforesaid on the 5th day of June, A. D. 1888, the following order was entered:

CITY OF FRANKFORT, Appellant, *versus* FARMERS' BANK OF KENTUCKY, Appellee. } Appeal from Franklin Common Pleas Court.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that appellee recover of appellant its cost herein.

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of Kentucky court of appeals, hereby certify that the foregoing 38 pages contain a true, full and complete transcript of the record and proceedings had in said court in the case wherein The Board of Councilmen of the City of Frankfort, &c., are appellants and The Farmers' Bank of Kentucky is appellee, except the opinion of the court, which is copied in the record in case of Franklin County Court, &c., *vs.* Farmers' Bank of Kentucky, and except the proceedings upon, and the petition for, rehearing, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed

the seal of my office. Done at Frankfort, Ky., this 11th day of May, A. D. 1897.

[SEAL.]

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

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Exhibit "C" reads as follows:

Copy of acceptance of the provisions of the Hewitt law by the Farmers' Bank of Kentucky, on file in office of auditor of public accounts.

FARMERS' BANK OF KENTUCKY, *December* 6, 1887.

At an adjourned meeting of the stockholders of the Farmers' Bank of Kentucky, held in their banking-house in the city of Frankfort on Tuesday, the 6th day of December, 1887, a majority in interest of a quorum of said stockholders being present, it was resolved that the consent of said bank be and is hereby given to the levying and payment of the tax as provided in and by article 11, charter 1233, of "An act to amend the revenue laws of the

Commonwealth of Kentucky," approved May 17th, 1886, and said bank hereby waives and releases all right under its charter to a different mode or a smaller rate of taxation.

Which order and consent of the stockholders was ordered to be certified to the governor as required by said act.

69 In testimony whereof the signature of the president, and the corporate seal of the bank are hereto attached the above date written.

[SEAL.] THOMAS RODMAN, *President.*
GRANT GREEN, *Cashier.*

A copy.
Attest: F. H. JOHNSON,
Assistant Auditor.

Exhibit "D" reads as follows:

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the first day of June, A. D. 1895, Chief Justice William S. Prior, Judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, and George B. Eastin and B. L. D. Guffy sitting.

THE FARMERS' BANK OF KENTUCKY, Appellant,
vs.
COUNTY OF FRANKLIN and R. D. ARMSTRONG, Sheriff of Franklin County, Appellees.

Be it remembered that heretofore, to wit, on the 4th day of October, A. D. 1894, the appellant, by its counsel, filed in the clerk's office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

FARMERS' BANK OF KENTUCKY *against* FRANKLIN COUNTY, &C. } Pleas before Hon. James E. Cantrill, Judge.

January Term, 1894.

Be it remembered that on the 22d of December, 1894, the plaintiff filed the following petition herein, to wit:

Franklin Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE COUNTY OF FRANKLIN and R. D. ARMSTRONG, Sheriff of Franklin County, Defendants. } Petition in Equity.

The plaintiff, The Farmers' Bank of Kentucky, states that it is a corporation and as such has the right to sue and be sued, plead and be impleaded, contract and be contracted with. That it was incor-

porated and chartered by an act of the General Assembly of the Commonwealth of Kentucky, entitled "An act to incorporate the Farmers' Bank of Kentucky," approved February 16, 1850, which act, together with all the amendments thereto are referred
70 to as part hereof, and by reason of said act of incorporation it undertook and agreed to perform certain public duties therein mentioned, such as carrying on the banking business, loaning money, discounting notes and bills of exchange, etc., and it states that in accordance with said provisions of said charter it has fully performed all of its duties to the public and complied with its contract with the State.

That its principal bank and principal place of business is in Frankfort, Kentucky. That one of its branches is in the city of Henderson, Kentucky, and one in Georgetown, Kentucky, all of which are in existance and operation.

The plaintiff states that by the terms of its charter and in consideration of its organization and acceptance of the same, it was authorized and bound by the cashier of its principal bank, on the 1st of July of each year and every year thereafter during the existence of its charter, to pay to the treasurer of Kentucky fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus. Said provision is in section No. 15 of said act of 1850, chartering this plaintiff, and reads as follows: "It shall be the duty of the cashier of the principal bank, on the 1st day of July, 1891, and on the 1st day of July in each succeeding year during the continuance of this charter, to pay into the treasury of the Commonwealth fifty cents on each one hundred dollars of stock held and paid for by said bank, which shall be in full of all tax or bonus, provided that no tax shall be paid until said bank goes into operation, and provided further that the tax or bonus hereby proposed to be imposed on each share is set apart and forever dedicated to the cause of education on the common-school system, and whenever the same or any part thereof shall be directed otherwise by legislative enactment said bank shall be exonerated from the payment of any tax or bonus whatever."

The plaintiff states that said contract and stipulations as contained in said charter fixing the said rate of taxation of plaintiff's property conduced to an acceptance by plaintiff of said charter, and the plaintiff was thereby induced to and did organize under said charter in a short time after its passage by the legislature, and the said contract and the provision in regard to taxation has been relied on by plaintiff and has conduced to the maintenance and operation of plaintiff's bank and its said branches. That by an act entitled "An act extending the charter of the Farmers' Bank of Kentucky," approved March 10th, 1876, the legislature of Kentucky extended the plaintiff's charter for a period of twenty-five years from the time of the expiration of its original charter, to wit, twenty-five years from the 1st day of May, 1880. Said act is referred to as part hereof and reads as follows:

"That the charter of the Farmers' Bank of Kentucky as amended,

be extended for the period of twenty-five (25) years from the
71 termination of its charter as therein fixed: Provided, that said charter and amendments shall be subject to amendment or repeal by the General Assembly, either by general or special act; and provided further, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other right previously vested." Acts 1886, volume 2, page 324.

Said acts are referred to as parts hereof.

That in accordance with the provisions of its charter and the contract therein contained between the plaintiff and the Commonwealth of Kentucky, it paid to the treasurer of the Commonwealth of Kentucky on the first day of July in each year ever since its organization, and up to the 6th day of December, 1887, an annual tax of fifty (50) cents on each hundred dollars of stock held and paid for in said bank which payments, as plaintiff is advised, were in full of all tax or bonus, and the same was received and accepted by the Commonwealth of Kentucky in full of all tax or bonus against this plaintiff.

The plaintiff states that soon after the adoption of said original act of incorporation and in conformity with its terms and provisions, it organized and established said bank, which has ever since been and still is, in regular operation, doing the business authorized by its said charter.

Plaintiff states that a general statute passed by the said legislature of Kentucky, approved May 17, 1886, chapter 92 of the General Statutes of Kentucky, commonly called the "Hewitt act," article 2, section 1 of said act, provided and reads as follows:

"Shares of stock in national and State banks and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall in addition pay upon each one hundred dollars of so much of their surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, and the same rate of taxation that is now assessed upon real estate, shall be in full of all tax, State, county and municipal." That section four (4) of said act reads as follows:

"That each of said banks, institutions and corporations by its proper corporate authority, with the consent of a majority in interest of a quorum of stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided, and to waive and release all rights under the acts of Congress, or under the charters of the State banks, to a different mode or smaller rate of taxation which consent or *agreement to and with the State of Kentucky, shall* be evidenced
72 by writing under the seal of such bank and delivered to the governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation what-

soever so long as said tax shall be paid during the corporate existence of such bank."

Under the seventh section of the same article it is also provided, that nothing in said act contained shall be construed as exempting from taxation for county or municipal purposes any real estate or buildings owned and used by said banks or corporations for conducting their business, but that the same may be taxed for county and municipal purposes as other real estate is taxed.

That in the fifth section of said act it is also provided that said banks may take the proceedings authorized by said fourth section of said act at any time until the meeting of the next General Assembly, provided they pay the tax aforesaid.

Now, the plaintiff states that previous to the next session of the General Assembly of the Commonwealth of Kentucky, after the passage of said act, and within the time fixed by said act for an acceptance of the proposition of the State of Kentucky, to wit, on the 6th day of December, 1887, the plaintiff, The Farmers' Bank of Kentucky, at an adjourned meeting of a majority in interest of a quorum of the stockholders of said bank, did consent and agree to and with the Commonwealth of Kentucky to the levying and payment of said tax as provided in and by article 2, chapter 1233, of "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and waived and released all rights under its charter to a different mode or smaller rate of taxation, which agreement with the State of Kentucky was evidenced by writing under the seal of plaintiff and delivered to the governor of the Commonwealth of Kentucky as provided by said act. A certified copy of said agreement is filed herewith as part hereof, marked "A," and the plaintiff in all respects complied with all the requirements of said act. The plaintiff further states that in consideration of said agreement to pay said additional tax of twenty-five (25) cents on each one hundred dollars of its capital stock, and to pay the same rate of tax that might be assessed on real estate in Kentucky on so much of its surplus as exceeded an amount equal to ten (10) per cent. of its capital stock, and to permit its real estate and buildings owned or used by it for conducting its business to be taxed for city and county purposes, the said Commonwealth of Kentucky agreed and contracted with this plaintiff that this plaintiff, The Farmers' Bank of Kentucky, and its shares of capital stock should be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of the bank.

It states that ever since its acceptance of said "Hewitt act" as aforesaid, it has paid to the State of Kentucky the above taxes on all the shares of stock and all taxable surplus and profits in the proportions or rates as fixed and contemplated by the said
73 act and contract, and it has paid all the county and municipal taxes assessed against its real estate owned and used by said bank and its branches in conducting its business, until the 1st day of July, 1893, when it filed its report in accordance with the "Hewitt act" and tendered and offered to pay to said State of Kentucky, through its auditor of public accounts, whose duty it was to

receive the same, the sum of $7,747.36, it being the full amount of the tax for which the plaintiff was liable for the year 1893, the same being the only remaining unpaid tax against the plaintiff, and the State of Kentucky, by its auditor of public accounts, whose duty it was to receive the same, refused to accept said sum of $7,747.36 in full payment of all tax against plaintiff, excepting its real estate, which it has paid as required by law. That it is now and always has been ready and willing and able to continue to pay the said tax as provided by said "Hewitt act," and to fully comply with its agreement, in every particular, under said act.

It states that it also tendered to said auditor of public accounts in full of its tax of every character forty-nine hundred and fifty-seven dollars, it being fifty cents on each of its shares of capital stock as provided by its charter, which the said auditor declined to receive, upon the ground that the charter provision of plaintiff with reference to taxation was not in force. The plaintiff now says and submits that under its said contract with the State of Kentucky it is not liable to the payment of any greater, or higher, or with other rate of tax, State, county or municipal, than that fixed under its said contract during the period of its existence as a corporation.

It states that its said contract with the State of Kentucky is in full force, and is irrepealable during the corporate existence of said bank plaintiff, so long as said bank continues to observe the same, and also that under said agreement said bank, and the shares of stock therein, and the property of said bank, excepting its banking-house, are exempt from both county and municipal taxation.

The plaintiff states that the General Assembly of the Commonwealth of Kentucky, by an act entitled "Revenue and taxation," chapter 103, which became a law on November 11, 1892, enacted in article 1, section 2, that all real and personal estate within the State of Kentucky, and all personal estate of persons residing within such State, and of all corporations organized under the laws of this State, whether the property be in or out of this State, including intangible property which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to taxation, unless the same shall be exempt from taxation by the State constitution, and in the third section thereof, that the State of Kentucky, and each county, incorporated city, town and taxing district shall have a lien on all other property of each person or corporation owing the same for the taxes due by them respectively.

The plaintiff states and submits that, if such act was intended as defendants claim, by the said legislature of Kentucky to
74 apply to and include this plaintiff, or the shares of stock held by its stockholders, or the stock therein, or any of its property, the same is in direct conflict with the said agreement and contract made between this plaintiff and the State of Kentucky, and as to the plaintiff and said stockholders and plaintiff's property, the last act mentioned is inoperative and void, during the corporate existence of the said plaintiff, The Farmers' Bank of Kentucky; and the plaintiff further states and submits that the said act of November 11, 1892, in so far as it conflicts with the aforementioned

agreement or contract, impairs the obligations of said contract, and is unconstitutional and void.

Plaintiff further states and submits, that if it should be held by the court, that the act of Nov. 11, 1892, operated as a repeal of the said "Hewitt" law of 1886, and as a repudiation by the State of Kentucky of its said contract, or a withdrawing from the same; then the original charter of this plaintiff is now in full force and effect and the plaintiff is restored thereby, to all of its vested rights under its original charter, among which is the exemption of plaintiff's property and its stock from any other or greater tax than that specifically designed by its charter, to wit fifty cents on each one hundred dollars of its capital stock in full of all bonus or tax.

The plaintiff states that on the — day of November, 1882, it filed a petition in the Franklin county pleas court against The Franklin County Court and one against The Board of Councilmen of the City of Frankfort, etc., in which it sets forth the provisions of said section 15 of the charter and its amendments and claimed that under its charter and amendments the State of Kentucky agreed that plaintiff should pay to its treasurer fifty cents on each one hundred dollars of stock held and paid for by plaintiff in full of all tax or bonus, and ask for an injunction against the said county of Franklin, enjoining it from collecting any tax whatever from this plaintiff, the said county having attempted to levy a tax on plaintiff's property for county purposes. That on the — of May, 1884, the said Franklin common pleas court upon final trial of said case, after all the issues were made, decided that the said charter of this plaintiff granted by the State of Kentucky and accepted by plaintiff, constituted a binding and inviolable contract by which the plaintiff was to pay into the treasury of Kentucky annually fifty cents on each one hundred dollars of stock held and paid for by plaintiff in full of all tax or bonus and that plaintiff could not be taxed for any county or municipal purposes whatever, and perpetuated said injunction asked for.

Said judgment and the record now on file in this honorable court, is referred to as part hereof. That said case was appealed to the Kentucky court of appeals, together with the case of The President and Directors of Branch Bank of Kentucky *vs.* said Franklin County and The Deposit Bank of Frankfort *vs.* Said County and the
75 said Bank *vs.* The City of Frankfort, and the said judgment was affirmed by the said Kentucky court of appeals by an opinion rendered by said court of appeals on the 5th day of June, 1888, and reported in volume 87, Kentucky Reports, on page 370. Said opinion is referred to as part hereof; and the plaintiff now pleads and relies upon said judgment of the Franklin common pleas court, and the opinions of said appellate court and the records in said suits.

The Farmers' Bank of Kentucky *vs.* Franklin County Court, and Farmers' Bank of Kentucky *vs.* The City of Frankfort, &c., as *res adjudicata* of any claim to tax plaintiff's property for county or municipal purposes, and in bar of any right of defendants or any other person or corporation to tax plaintiff's property or its franchise for any purpose whatever.

The plaintiff states that the defendant, The County of Franklin, is unlawfully and without any right attempting to subject the plaintiff and its capital stock and its other property to the payment of certain county taxes claimed by the defendant, The County of Franklin, as owing to it from this plaintiff, and certain penalties for the non-payment of said tax so claimed by the defendant.

The plaintiff states that the defendant, R. D. Armstrong, is the sheriff of Franklin county, and as such the collector of taxes, and as said collector of taxes, he has demanded of this plaintiff ($2,810.20) twenty-eight hundred and ten dollars and twenty cents for said taxes for 1893, so claimed by the county, and $168 as a penalty for not heretofore paying them to him, which taxes and penalty the plaintiff has refused to pay, and the plaintiff states that the defendant, The County of Franklin, through said sheriff, and the said sheriff, the defendant, R. D. Armstrong, have threatened, and are now threatening, to levy upon and sell the banking-house and other property of the plaintiff, in order to pay and satisfy said taxes and penalty, and unless restrained by law, they will proceed to carry out said threat, and sell plaintiff's property; and if an injunction, as hereinafter asked, is not immediately granted, the plaintiff will suffer and sustain great and irreparable injury. The plaintiff states that it does not owe the county of Franklin the sum so claimed for taxes or any part thereof on any property of plaintiff's for the year 1893, or any other year, and that the defendant, Armstrong, has no legal right to levy on or sell any of plaintiff's property, but unless enjoined and restrained, he will do so, and carry out his said threats, to the great and irreparable injury of the plaintiff. Plaintiff is without adequate remedy at law, and says that no injunction had been refused by the court, by any circuit judge, or by any one else, in regard to the matter herein, wherefore the plaintiff prays that the defendants be enjoined and restrained from collecting from the plaintiff the taxes and penalties above mentioned, or any part thereof, and from levying upon or selling the banking-house or any other property of plaintiff's for said taxes or penalty.

76 That plaintiff's rights under the said contract with the State of Kentucky, and all of its above-vested rights under its charter, be protected and held inviolable by this honorable court, and for all other proper relief, both general and special, as the nature of the case may require.

JOHN W. RODMAN,
Attorney for Farmers' Bank of Kentucky.

Thomas Rodman says that he is the president of the Farmers' Bank of Kentucky, and that he believes the foregoing statements are true.

THOMAS RODMAN.

Sworn to and subscribed before me this 15th day of December, 1893.

HARRY G. RODMAN,
Examiner for Franklin County, Kentucky.

The following is Exhibit "A" referred to, viz:

STATE OF KENTUCKY:

Office auditor of public accounts, Frankfort.

(Copy.)

FARMERS' BANK OF KENTUCKY,
FRANKFORT, *December* 6, 1887.

At an adjourned meeting of the stockholders of the Farmers' Bank of Kentucky held in their banking-house in the city of Frankfort on Tuesday, the 6th day of December, 1887, a majority in interest of a quorum of said stockholders being present, it was resolved that the consent of said bank be and is hereby given to the levying and payment of the tax as provided in and by article II, chapter 1233, of "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and said bank hereby waives and releases all right under its charter to a different mode or a smaller rate of taxation.

Which order and consent of the stockholders was ordered to be certified to the governor as required by said act.

In testimony whereof the signature of the president and the corporate seal of the bank are hereto attached the date above written.

THOMAS RODMAN, *President.*

Attest: GRANT GREEN, *Cashier.*

[SEAL.]

A copy.
Attest: VIRGIL HEWITT,
Assistant and Acting Auditor.

77 Whereupon the following injunction bond was executed, to wit:

Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY
versus
FRANKLIN COUNTY, KENTUCKY, &C. } Bond.

We undertake that the plaintiff, The Farmers' Bank of Kentucky, shall pay to the defendant, Franklin County, Ky., such damages as they may sustain if it be finally decided the injunction ought not to have been granted.

December 22, 1893.

FARMERS' BANK OF KENTUCKY,
By THOMAS RODMAN, *President.*
THOMAS RODMAN.

Attest: THOS. B. FORD, *C. F. C. C.*,
By C. E. JAMES, *D. C.*

Whereupon the following order of injunction was issued, to wit:

Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY
vs.
FRANKLIN COUNTY, &c. } Order of Injunction.

The Commonwealth of Kentucky to Franklin County, Kentucky, and R. D. Armstrong, sheriff of Franklin county, Kentucky:

You and each of you are hereby enjoined and restrained from collecting from the plaintiff the taxes and the penalties above mentioned (viz. $2,810.20 for said taxes for 1893, so claimed by the county, and $168.00 as a penalty for not heretofore paying them) or any part thereof, and from levying upon or selling the banking-house or any other property of plaintiffs for taxes or penalty.

Witness Thomas B. Ford, clerk of said court, this 22d December, 1893.

THOMAS B. FORD, *C. F. C. C.*,
By C. E. JAMES, *D. C.*

Endorsed.

Executed by delivering a true copy of the within injunction to B. G. Williams, presiding judge of Franklin county, and R. D. Armstrong, sheriff of Franklin county, this 22d day of December, 1893.

W. S. DEHONEY, *C. of F. Co.*

78 Thereupon the following summons was issued, to wit:

The Commonwealth of Kentucky to the coroner of Franklin county, Greeting:

You are commanded to summon Franklin County, Kentucky, and R. D. Armstrong, sheriff of Franklin county, Kentucky, to answer on the 1st day of next January term of the Franklin circuit court a petition in equity filed against them in said court by Farmers' Bank of Kentucky, and warn them that upon failure to answer, the petition will be taken for confessed, or they will be proceeded against for contempt, and you will make due return of this summons on the 1st day of the next January term of said court.

Witness, Thomas B. Ford, clerk of the said court, this 22d day of December, 1893.

THOMAS B. FORD, *Clerk*,
By C. E. JAMES, *D. C.*

Endorsed.

Executed by delivering a true copy of the within summons to B. G. Williams, presiding judge of Franklin county, and R. D. Armstrong, sheriff of Franklin county, this 22d day of December, 1893.

W. S. DEHONEY, *C. of F. Co.*

Afterwards, at a court held on the 27th day of January, 1894, the following judgment was rendered herein, to wit:

FARMERS' BANK OF KENTUCKY
vs.
R. D. ARMSTRONG, &c.

The plaintiff filed its amended petition herein, to which the defendants demurred; said demurrer to the petition as amended was sustained, to which ruling the plaintiff excepts, and declining to amend further, the court filed an opinion herein, and it is adjudged that the plaintiff's petition be dismissed and that defendants recover of plaintiff their costs herein.

To all of which plaintiff excepts, and prays an appeal to the court of appeals, which is granted.

Said amended petition is as follows, to wit:

Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
FRANKLIN COUNTY, &c., Defendants.
Amended Petition.

The plaintiff amends its petition by adding thereto and saying, that before the institution of this suit, to wit, on the 22nd day
79 of February, 1893, the defendant, R. D. Armstrong, being then and there the duly elected, qualified and acting sheriff of Franklin county, filed in the office of the clerk of the Franklin county court a report stating that plaintiff had been delinquent in failing to list for taxation at the then preceding assessment, that is, the assessment upon which the taxes for the year 1893 were to be paid, its notes, bonds, choses in action and other property, alleged to have amounted to $450,000.00, that thereupon a summons was issued commanding plaintiff to appear at the then ensuing term of the county court of said county and show cause, if any it could, why its property aforesaid should not be listed at the amounts aforesaid; that thereafter, to wit, on the 5th day of May, 1893, plaintiff did appear and file its answer and response, showing that it was not required by law to give in to the assessor its property for taxation, and that it had reported to the auditor as required by law, and said court held and adjudged that plaintiff was not delinquent as to any of its property or assets, and dismissed the said proceeding at the cost of the county; that thereupon the County of Franklin, as relator, made and perfected and appealed to this court from said order, and said appeal came on for hearing on September 28, 1893; at its September term, a judgment was duly rendered dismissing the said proceeding and giving plaintiff a judgment for costs against Franklin County, to which judgment the said county excepted and prayed an appeal to the court of appeals, which was granted, and the plaintiff in said proceeding and the defendant in this action, Franklin County, has filed a transcript of the record of said proceeding in the

clerk's office of the court of appeals, and is in said court prosecuting its said appeal. Wherefore plaintiff prays as in its petition.

JOHN W. RODMAN,
Attorney for Plaintiff.

Said opinion of the court is as follows, to wit:

This is a suit to enjoin the collection of county taxes levied under the provisions of the new revenue act, which became a law November 11, 1892.

The petition sets out at length a charter of the bank, the amendments thereto and the decisions of the court of appeals, wherein it is held that the provisions of the original and amended charter, created and constituted an irrevocable contract, from which the State could not withdraw or recede without the consent of the bank. That the bank had such a contract with the State from the time it was chartered in 1834 to the time it accepted the provisions of the revenue law of 1886, known as the Hewitt bill, can hardly be questioned in the light of the adjudication touching the chartered rights and privileges of this and like institutions.

In 1887 the plaintiff accepted the provisions of the Hewitt law in the manner prescribed therein, and it alleges that this acceptance made a contract with the State of the same binding force
80 and validity, although different in terms, as the contract it had under its charter, and that the effort of the State or any of its subdivisions to collect any other tax than that mentioned in the act of 1886 is in violation of the provisions of the constitution of the State and the United States. To the petition the defendant enters a general demurrer; it therefore devolves on this court to construe article 2 of the act of 1886, and in like manner pass upon the validity of the new revenue act of 1892.

Section 1 of article 2 of the Hewitt bill provides that each share of stock equal to $100 shall be taxed 75 cents, and that all surplus exceeding ten per cent. of the capital stock shall be assessed at the same rate as real estate is assessed, and that the taxes on these shares and surplus shall be in full of all tax, State, county and municipal. Section 4 of the same article provides how the banks "may give consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all rights under the acts of Congress, and under the charters of the State banks, to a different mode or smaller rate of taxation," "and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank."

The language of these two sections is strong, and seems to embody all the essential qualities necessary to constitute a valid contract between the banks and the State during the corporate existence of the banks accepting its provisions, and it is equally explicit in that only the tax on the shares of stock and the surplus therein defined shall be levied and collected.

It is contended, however, on the part of the defendants, that sec-

tions 6 and 7 of the same article place certain limitations upon the provisions just above recited, and that the State intended to reserve and did reserve to itself the right and power to amend, repeal, modify and enlarge the scope and meaning of the terms and conditions imposed by sections 1 and 4. Section 6 is that the act under consideration shall be subject to the provisions of what is known as the act of 1856, the language of which is "that all charters and grants of or to corporations, or amendments thereof enacted or granted since the 14th of February, 1856, and all other statutes shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed." Section 7 provides that in case any bank refuses to pay the tax imposed under this act (Hewitt bill), it shall be taxed for State, county and municipal purposes as the taxable property in the hands of individuals; and it also provides "that nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned or used by said banks and corporations for conducting their business, but the same may be taxed for county and municipal purposes, as other real estate is taxed."

81 This is indeed a confused and contradictory statute; the language of one section indicates that in case the bank pays the tax it shall be exempt from all other taxation during the corporate existence of the bank, while another section provides that this exemption shall be only during the pleasure and will of the legislature. One section says that if the bank will pay the seventy-five cents tax on each $100 share of its stock and the tax on its surplus, it shall be exempt from all other tax whatsoever, while another section says its real estate "may be taxed for county and municipal purposes," yet its real estate is as much represented by its shares of stock as any other asset of the bank.

Much has been appropriately said about the time and circumstances surrounding the passage of the Hewitt bill; that it was an effort on the part of the State to adopt an uniform system of taxation for this class of property; that the State was sadly in need of the revenue which the increased tax of twenty-five cents per share of stock would yield; that the banks which had contract rights under their charters were willing to surrender them and be placed on the same footing as those which had none, but that in accepting the provisions of the Hewitt bill they believed they were securing another contract of as binding force as the one surrendered, and that the State cannot afford to practice bad faith by making promises she did not intend to keep.

It is further said, with equal force, that if the banks are compelled to pay taxes as required by the present revenue law the equality of taxation among banks will be destroyed; that certain county and municipal taxes will amount almost to the earnings of the capital stock of the banks in those localities; that bank capital receives but little if any benefit from county or municipal governments, while other classes of property receive many other benefits which the banks do not receive. On the other hand, this court cannot

ignore the recent political history of the State which imposed upon the legislature the necessity of enacting a law of which the plaintiff now complains.

When the new constitution was being discussed before the people for the adoption or rejection, none of its provisions were more clearly defined or understood than those relating to taxation, and many bank officers and stockholders were earnest advocates for its adoption. And it is a fact that every banking community voted for the adoption of the new constitution, and those communities having the greatest number of banks gave, therefore, the largest majorities.

In view of these facts it can hardly be contended that the holders of bank stock, especially those who favored the adoption of the new constitution, believed that they held an irrevocable contract under the Hewitt bill.

But it is contended on the part of the plaintiff that section 6 of article 2 of the Hewitt bill was not intended to apply to sections 1 and 4 of the same article—that it has no more significance
82 than if it were placed in article 1 or article 12. If such be the case it ought to go a long ways towards maintaining the position that the terms of article 2 constituted a contract with the banks. In no other article of the bill, however, is reference made to the act of 1856, and in ascertaining the intention of the legislature, the courts will be governed not only by the language of the act, the position which one section thereof bears to the other—the purpose for which the law was adopted—but also by the history of the bill as contained in the journals kept by the two houses of the General Assembly. The journals of the senate and house of representatives show that the Hewitt bill, which contains twelve articles, was considered, more or less, article by article, and that article 2 was considered by each house as if it constituted a separate act in itself. Efforts were made to exempt this article from the act of 1856, and without success. Failing in this, provision was attempted to be made that the act of 1856 should not apply to the provisions of article 2 until after the expiration of ten years, and this amendment was likewise defeated. The position of section 6 in article 2, together with the history of its enactment as shown by the journals of the two houses, clearly indicate the legislative intent.

After the passage of the Hewitt bill the plaintiff had the option to accept or reject its provisions. It elected to surrender its contract under its charter and accept those provisions, and, having so elected, this court is of the opinion that it cannot now be heard to say that the repeal of the Hewitt bill restored it to its original status under its charter.

It is ordered that the demurrer to the plaintiff's petition as amended be sustained, to which ruling of the court the plaintiff excepts, and the plaintiff being given leave, but declining to plead further, it is ordered that the petition be dismissed and that the defendants recover their costs herein expended, and to all of which the plaintiff objects and excepts, and prays an appeal to the court of appeals, which is granted.

STATE OF KENTUCKY, } *sct:*
Franklin County, }

I, Thomas B. Ford, clerk of the Franklin circuit court, do certify that the foregoing 26 pages contain a true, perfect and complete transcript of all the pleadings, orders and proceedings in the case mentioned therein, taken from the records of my said office.

Given under my hand as clerk aforesaid, this, the 23d day of February, 1894.

THOMAS B. FORD, *Clerk.*

83 Upon which transcript was entered the following statement:

Kentucky Court of Appeals.

FARMERS' BANK OF KENTUCKY, Appellant,
vs.
THE COUNTY OF FRANKLIN and R. D. ARMSTRONG, Sheriff of Franklin County, Appellees.

The judgment appealed from was rendered at the January term, 1894, of the Franklin circuit court, and is on page 18 of record. An appeal was granted by the court below.

J. W. RODMAN,
Attorney for Appellant.

Afterwards, at a court of appeals begun and held in and for the Commonwealth of Kentucky at the capitol in the city of Frankfort, on the 4th day of October, A. D. 1894, the following order was entered:

FARMERS' BANK OF KENTUCKY
vs.
COUNTY OF FRANKLIN, &c. } Franklin.

Came the parties by counsel and on their motion and by consent it is ordered that this cause be docketed.

The appellant moved the court to advance this case, together with the case of Farmers' Bank of Kentucky *vs.* City of Frankfort, &c., and the case of Farmers' Bank of Kentucky *vs.* City of Henderson, and hear them with the case of Commonwealth, &c., *vs.* Farmers' Bank of Kentucky, which was continued for oral argument at the last term of this court, and the case is submitted on the motion.

Afterwards, at a court of appeals held as aforesaid on October 23, A. D. 1894, the following order was entered:

FARMERS' BANK OF KENTUCKY *vs.* FRANKLIN COUNTY, &c.	Franklin.
SAME *vs.* CITY OF FRANKFORT, &c.	Franklin.
SAME *vs.* CITY OF HENDERSON.	Henderson.

The court being advised, it is ordered that these causes be advanced and set for hearing with the case of The Commonwealth, &c., *vs.* Farmers' Bank of Kentucky, on the argument docket for the next term of this court.

Afterwards, at a court of appeals held as aforesaid, the following order was entered:

COMMONWEALTH *vs.* FARMERS' BANK OF KENTUCKY.	Franklin.
FARMERS' BANK OF KENTUCKY *vs.* COUNTY OF FRANKLIN.	Franklin.
SAME *vs.* CITY OF FRANKFORT.	Franklin.
SAME *vs.* CITY OF HENDERSON.	Franklin.

By agreement of all the parties, and on their motion, it is ordered that these seventeen cases be heard together, and said causes coming on to be heard, were argued by A. P. Humphrey for
84 the banks and Ira Julian for the Commonwealth, counties and cities and laid over until tomorrow for further hearing.

Afterwards, on the 5th day of March, 1895, the following order was entered herein:

These causes again coming on to be heard, were argued by D. W. Lindsey for the banks, and W. McD. Shaw and Hugh Rodman for the counties and cities, and laid over for further hearing on tomorrow.

Afterwards, on March 7, 1895, this order was entered:

These causes again coming on to be heard, were argued by Wm. Goebel for the banks, and H. C. Barker for the counties and cities, and laid over for further hearing on tomorrow.

And afterwards, on March 8, 1895, this order was entered:

These causes again coming on to be heard, were argued by John W. Rodman and T. L. Edelen for the banks and laid over for further hearing on tomorrow.

And afterwards, on March 9, 1895, this order was entered:

These causes again coming on to be heard were argued by James P. Helm for the banks and laid over for further hearing on next Tuesday.

And afterwards, on March 12, 1895, this order was entered:

These causes again coming on to be heard, were argued by Wm. J. Hendrick for the Commonwealth and submitted.

Afterwards, at a court of appeals held as aforesaid, on the 1st day of June, 1895, the following judgment was entered:

FARMERS' BANK OF KENTUCKY, Appellant,
versus
FRANKLIN COUNTY, &c., Appellees.
} Appeal from Franklin Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed, and the cause remanded for further proceedings, consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appellant recover of the appellees its costs herein expended.

Judges Lewis, Guffy and Paynter dissenting. Dissenting opinion delivered by Judge Paynter.

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing twenty-eight pages and this page contain a true, full and complete transcript of the record and proceedings had in said court in the case wherein The Farmers' Bank of Kentucky is appellant and Franklin County, etc., are appellees,
85 except the opinions of the court, which are copied in the record in case of Farmers' Bank of Kentucky *vs.* City of Frankfort, etc., and except the proceedings upon and the petition for a rehearing, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Ky., this 11th day of May, A. D. 1897.

ABRAM ADDAMS,
Clerk — the Court of Appeals.

[SEAL.]

Exhibit "E" reads as fololws:

Franklin Circuit Court, January 21, 1896.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
FRANKLIN COUNTY COURT, &c., Defendants. } Judgment.

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being sufficiently advised, it is adjudged that article 2 of the act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886 (General Stats., chapter 92, art. 2), and the acceptance of the provisions thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and of the act of November 11, 1892 (act 3, chap. 103, Acts 1891–'2–'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax *the plaintiff's property, rights of property or franchise, except to assess and tax*, for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution, and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same, or any part of the same, for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be and the same is now hereby made perpetual, and the defendant be, and each of them are perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any
86 taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes on its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

STATE OF KENTUCKY,
County of Franklin, } *sct:*

I, Thos. B. Ford, clerk of the Franklin circuit court, certify that the foregoing is a true copy of the judgment in the above-styled case.

Witness my hand as clerk of said court, this May 7th, 1897.

THOS. B. FORD,
[SEAL.] *Clerk Franklin Circuit Court,*
By J. R. ELLIOT, *D. C.*

Exhibit "F" reads as follows:

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol of the city of Frankfort, on the first day of June, A. D. 1895, Chief Justice W. S. Pryor, Judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin sitting:

THE FARMERS' BANK OF KENTUCKY, Appellant,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James Hallnan, Tax Collector for the City of Frankfort, Appellees.

Be it remembered that heretofore, to-wit, on the 4th day of October, A. D. 1894, the appellant by its counsel filed in the clerk's office of the clerk of the court of appeals a transcript of a record in words and figures following, to-wit:

Pleas before the honorable judge of the Franklin circuit court, at the court-house, at Frankfort, Kentucky.

Be it remembered that on the 6th day of September, 1894, the Farmers' Bank of Kentucky, filed in the clerk's office of said court its petition herein, which is in words and figures as follows:

Franklin Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus.
THE BOARD OF COUNCILMEN OF THE CITY OF Frankfort, and James Hallnan, Tax Collector for the City of Frankfort, Defendants. } Petition in Equity.

The plaintiff, The Farmers' Bank of Kentucky, states that it is a corporation and as such has the right to sue and be sued, plead and be impleaded, contract and be contracted with.

87 That it was incorporated and chartered by an act of the General Assembly of the Commonwealth of Kentucky entitled "An act to incorporate the Farmers' Bank of Kentucky," approved February 16th, 1850, which act, together with all the amendments thereto, are referred to as part hereof, and by reason of said act of incorporation it undertook and agreed to perform certain public duties therein mentioned, such as carrying on the banking business, loaning money, discounting notes and bills of exchange, &c., and it states that in accordance with said provisions of said charter it has fully performed all of its duties to the public and complied with its contract with the State.

That its principal bank and the principal place of business is in Frankfort, Kentucky. That one of its branches is in the city of Henderson, Kentucky, and one in Georgetown, Kentucky, all of which are in existence and operation.

The plaintiff states that by the terms of its said charter and in consideration of its organization and acceptance of the same, it was authorized and bound by the cashier of its principal bank on the first day of July of each and every year thereafter during the existence of its charter to pay to the treasurer of Kentucky fifty cents on each one hundred dollars of stock held and paid for in said bank, which shall be in full of all tax or bonus. Said provision -s number 15 of said act of 1850, chartering this plaintiff, and reads as follows: "It shall be the duty of the cashier of the principal bank on the 1st day of July, 1851, and on the 1st day of July in each succeeding year during the continuance of this charter to pay into the treasury of the Commonwealth fifty cents on each one hundred dollars of stock held and paid for by said bank, which shall be in full of all tax or bonus: *Provided*, that no tax shall be paid until said bank goes into operation; and *provided further*, that the tax or bonus hereby proposed to be imposed on each share is set apart and forever dedicated to the cause of education on the common-school system, and whenever the same or any part thereof shall be directed otherwise by legislative enactment said bank shall be exonerated from the payment of any tax or bonus whatever."

The plaintiff states that said contract and stipulation as contained in said charter, fixing the said rate of taxation of plaintiff's property, conduced to an acceptance by plaintiff of said charter, and the plaintiff was thereby induced to and did organize under said charter in a short time after its passage by the legislature, and the said contract and the provision in regard to taxation has been relied on by plaintiff and has conduced to the maintenance and operation of plaintiff's bank and its said branches. That by an act entitled "An act extending the charter of the Farmers' Bank of Kentucky," approved March 10, 1876, the legislature of Kentucky extended the plaintiff's charter for a period of twenty-five years from the
88 time of the expiration of its original charter, to wit, twenty-five years from the first day of May, 1880; said act is referred to as part hereof and reads as follows:

"That the charter of the Farmers' Bank of Kentucky, as amended, be extended for the period of twenty-five (25) years from the termination of its charter as therein fixed: *Provided*, that said charter and amendments shall be subject to amendment or repeal by the General Assembly, either by general or special act; and, *provided further*, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." Acts 1886, volume 2, page 324. Said acts are referred to as parts hereof.

That in accordance with the provisions of its charter and the contract therein contained between the plaintiff and the Commonwealth of Kentucky, it paid to the treasurer of the Commonwealth of Kentucky on the first day of July in each year ever since its

organization, and up to the 6th day of December, 1887, an annual tax of fifty (50) cents on each hundred dollars of stock held and paid for in said bank, which payments, as plaintiff is advised, were in full of all tax or bonus, and the same was received and accepted by the Commonwealth of Kentucky in full of all tax or bonus against this plaintiff.

The plaintiff states that soon after the adoption of said original act of incorporation, and in conformity with its terms and provisions, it organized and established said bank, which has ever since been and still is, in regular operation, doing the business authorized by its said charter.

Plaintiff states that a general statute passed by the said legislature of Kentucky, approved May 17, 1886, chapter 92 of the General Statutes of Kentucky, commonly called the Hewitt act, article 2, section 1, of said act, provided and reads as follows: "Shares of stock in national and State banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereon equal to one hundred dollars of stock therein owned by individuals, corporations or societies, and said banks, institutions and corporations shall in addition pay upon each one hundred dollars of so much of their surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, and the same rate of taxation that is now assessed upon real estate, which shall be in full of all tax, State, county and municipal."

That section four (4) of said act reads as follows:

"That each of said banks, institutions and corporations by its proper corporate authority, with the consent of a majority in interest of a quorum of stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax and agree to pay the same as herein provided and to waive and release all rights under the act of Congress, or under the charters of the State banks, to a different mode or a smaller rate of taxation, which
89 consent or agreement to and with the State of Kentucky, shall be evidence by writing under the seal of such bank and delivered to the governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration therefor, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of said bank."

Under the seventh section of the same article it is provided that nothing in said act contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business, but that the same may be taxed for county and municipal purposes as other real estate is taxed.

That in the fifth section of said act it is also provided that said banks may take the proceedings authorized by said fourth section of said act at any time until the meeting of the next General Assembly, provided they pay the tax aforesaid.

Now, the plaintiff states that previous to the next session of the General Assembly of the Commonwealth of Kentucky after the passage *to* said act, and within the time fixed by said act for an acceptance of the proposition of the State of Kentucky, to wit, on the 6th day of December, 1887, the plaintiff, The Farmers' Bank of Kentucky, at an adjourned meeting of a majority in interest of a quorum of the stockholders of said bank, did consent and agree to and with the Commonwealth of Kentucky, to the levying and payment of said tax as provided in and by said article II, chapter 1233, of "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and waived and released all rights under its charter to a different mode or smaller rate of taxation, which agreement with the State of Kentucky was evidenced by writing under the seal of plaintiff and delivered to the governor of the Commonwealth of Kentucky, as provided by said act. A certified copy of said agreement is filed herewith as part hereof marked "A," and the plaintiff in all respects complied with all the requirements of said act.

The plaintiff further states that in consideration of said agreement to pay said additional tax of twenty-five (25) cents on each one hundred dollars of its capital stock, and to pay the same rate of tax that might be assessed on real estate in Kentucky, on so much of its surplus as exceeded an amount equal to ten (10) per cent. of its capital stock, and to permit its real estate and buildings owned or used by it for conducting its business, to be taxed for city and county purposes, the said Commonwealth of Kentucky agreed and contracted with this plaintiff that this plaintiff, The Farmers' Bank of Kentucky, and its shares of capital stock, should be exempt from all other taxation whatever so long as said tax shall be paid during the corporate existence of said bank. It states that ever since its acceptance of said "Hewitt act," as aforesaid, it has made re-
90 ports, as required by said act, and paid to the State of Kentucky the above taxes on all the shares of stock and all taxable surplus and profits in the proportion or rates as fixed and contemplated by said act and contract, and it has paid all the county and municipal taxes assessed against its real estate, owned and used by said bank and its branches in conducting its business, until the 1st day of July, 1893. It states that on the 1st day of July in each of the years 1893 and 1894 the plaintiff's cashier made, as he had regularly done for years before, written reports to the auditor of public accounts, verified by his oath, as required by law, of the true amount of the capital stock of its bank and of its surplus, undivided profits and accumulations. It states that on the 1st day of July, 1893, it produced in lawful legal-tender money of the United States the amount necessary to pay the State of Kentucky the taxes due from it under said agreement, to wit, the sum of $7,747.36, the maximum tax for that year under said Hewitt act, and tendered and offered to pay the same into the treasury in full of taxes due from it under said agreement, and demanded of the auditor of public accounts a permit authorizing it to pay said amount into the

treasury in full of said taxes, but said tender and offer was refused by said officer.

It then, in like manner, produced to said officer the amount of $4,947 necessary to pay all the taxes due from it under the terms of its charter extended as aforesaid, it being the maximum tax for that year required by its charter, to wit, 50 cents on each $100 of stock held and paid for in said bank, and offered to pay the same into the treasury in full of all taxes due from it, and demanded of said officer a permit authorizing it to pay said amount into the treasury in full of said taxes, but its said tender and offer was refused by the auditor of public accounts. It then, under protest, and to prevent suits, and prosecutions against it, on demand of the auditor of public accounts, on said July 1, 1893, paid into the treasury the sum of $4,908.40, which was demanded of it by the auditor as the amount claimed by that officer to be due from it under and by virtue of an act of the legislature, entitled "An act relating to revenue and taxation," which became a law November 11, 1892 (chapter 103, Acts 1891, '2, '3).

It further states that on the 1st day of July, 1894, it tendered $7,747.37 to the auditor of public accounts in full of all taxes, under said agreement under the Hewitt act, for 1894, and he refused to receive the same, or to issue his warrant on the treasurer authorizing him to receive it. It also tendered him $4,947.00, in full of all its taxes as provided by its charter, for 1894, it being the maximum tax for that year required by its charter, and he declined to receive the same, or to issue his warrant upon the treasurer authorizing him to receive it, and, under protest, it paid into the treasury of the State of Kentucky, through its auditor and treasurer, $4,851.97, the amount which was demanded of it by said auditor to be due from it under the said act entitled "An act relating to
91 revenue and taxation," which became a law November 11, 1892. The said offers, tenders and demands were on each of said occasions refused and rejected by the said auditor under the claim by him that both the State tax provisions of plaintiff's charter and said act approved May 17, 1886, had been superseded and repealed by the new constitution of the State of Kentucky and the act of November 11, 1892. The plaintiff protesting against the said constitution and said act as illegal in their application to the taxation of the plaintiff acceded to the auditor's demands, and under protest paid said sums. It has paid all the municipal and county tax on its tangible property claimed to — due under said Hewitt act for the years 1893 and 1894. The plaintiff now says and submits that under its said contract with the State of Kentucky, it is not liable to the payment of any greater or higher or other rate of tax, State county or municipal, than that fixed under its said contract during the period of its existence as a corporation. It states that its said contract with the State of Kentucky is in full force, and is irrepealable during the corporate existence of said bank, plaintiff, so long as said bank continues to observe the same, and also that under said agreement said bank, and the shares of stock therein, and the property of said bank, excepting the banking-house, are

exempt from both county and municipal taxation. The General Assembly of the Commonwealth of Kentucky, by an act entitled "revenue and taxation," chapter 103, which became a law on November 11, 1892, enacted in article 1, section 2, that all real and personal estate within the State of Kentucky, and all personal estate of persons residing within such State, and of all corporations organized under the laws of this State, whether the property be in or out of the State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to taxation, unless the same shall be exempt from taxation by the State constitution, and in the third section thereof that the State of Kentucky and each county, incorporated city, town and taxing district shall have a lien on all other property of each person or corporation owing the same for the taxes due by them respectively.

The plaintiff states and submits that if such act was intended, as defendants claim, by the said legislature of Kentucky to apply to and include this plaintiff, or the shares of stock held by its stockholders, or the stock therein, or any of its property, the same is in direct conflict with the said agreement and contract made between this plantiff and the State of Kentucky, and as to the plaintiff and said stockholders and plaintiff's property, the last act mentioned is inoperative and void during the corporate existence of the said plaintiff, The Farmers' Bank of Kentucky, and the plaintiff states and submits that the said act of November 11, 1892, in so far as it conflicts with the aforementioned agreement of contract, impairs the obligation of said contract, and is unconstitutional and void.

Plaintiff further states and submits that if it should be held by the court that the act of November 11, 1892, operated as a
92 repeal of the "Hewitt act" of 1886 and as a repudiation by the State of Kentucky of its said contract, or a withdrawing from the same, then the original charter of this plaintiff is restored thereby to all its vested rights under its original charter, among which is the exemption of plaintiff's property and its stock from any other or greater tax than that specifically designated by its charter, to wit, fifty cents on each one hundred dollars of its capital stock in full of all bonus or tax.

The plaintiff states that on the — day of November, 1882, it filed a petition in the Franklin common pleas court against the Franklin county court and one against the defendant, The Board of Councilmen of the City of Frankfort, &c., in which it set forth the provisions of section 15 of the charter and its amendments, and claimed that under its charter and amendments the State of Kentucky agreed that the plaintiff should pay to its treasurer fifty cents on each one hundred dollars of stock held and paid for by plaintiff in full of all taxes or bonus, and asked for an injunction against the said city of Frankfort and county of Franklin, enjoining them from collecting any tax whatever from this plaintiff, the said city having attempted to levy a tax on plaintiff's property for city purposes. That on the — day of May, 1884, the said Franklin common pleas court, upon final trial of said cases, after all the issues

were made, decided that the charter granted by the State of Kentucky and accepted by the plaintiff, constituted a binding and inviolable contract by which the plaintiff was to pay into the treasury of Kentucky annually fifty cents on each one hundred dollars of stock held and paid for by the plaintiff in full of all tax or bonus and that plaintiff could not be taxed for any county or municipal purposes whatever, and perpetuated said injunction asked for. Said judgment and the record now on file in this honorable court is referred to as part hereof. That said case was appealed to the Kentucky court of appeals, together with the case of President and Directors of the Branch Bank of Kentucky *vs.* said Franklin County, and The Deposit Bank of Frankfort *vs.* said County, and said Bank *vs.* The City of Frankfort, and the said judgment was affirmed by the said Kentucky court of appeals on the 5th day of June, 1888, and reported in volume 87, Kentucky Reports, on page 370. Said opinion and record in said cases referred to as part hereof, and the plaintiff now pleads and relies upon said judgment of the Franklin common pleas court and the opinion of the said appellate court and the records in said suits, The Farmers' Bank of Kentucky *vs.* Franklin County Court, and Farmers' Bank of Kentucky *vs.* The City of Frankfort, &c., *res adjudicata* of any claim to tax plaintiff's property for county or municipal purposes, and in bar of any right of defendants, or any other person or corporation, to tax plaintiff's property or its franchise for any purpose whatever.

And plaintiff alleges that the said act of the legislature entitled "An act relating to revenue and taxation," which became a
93 law November 11, 1892 (chapter 103, acts 1891-'2-'3) and under the provisions of which the said board of valuation and assessment has attempted to assess the plaintiff; and the defendant, The Board of Councilmen of the City of Frankfort, has attempted to tax plaintiff for city purposes, and the defendant, James Hallnan, as tax collector is attemping to collect said tax, was and is in violation of and repugnant to the constitution of the State of Kentucky and the Constitution of these United States, and that by said act it is sought to impair the obligation of the contract between the plaintiff and the State of Kentucky created by and continued in force by its said charter of 1850 and the amendments thereto, and said acts of 1876 extending and continuing in force the same, and created and arising out of the said act of May 17, 1886 (commonly known as the Hewitt act), and the acts of the plaintiff in relation thereto hereinbefore fully set out.

By the terms of the act which went into effect November 11, 1892, entitled "An act relating to revenue and taxation," it is provided that all banks and other corporations, besides the taxes to the State treasury therein provided for, should also pay to the counties in which they may be located or doing business, taxes not only on all its tangible property located in such counties and cities, but also on the "franchise" of said corporation, which is a term used to describe all the other property and assets of said corporation; that said county and municipal taxation shall be at the same rate that other property is assessed or taxed. That when a corporation has officers or conducts

its business in more than one county of the State it is the duty of the State board of valuation and assessment, created by said act, to apportion to the several counties and cities in which the bank or corporation is located or conducting its business the part of the "franchise" of the bank or corporation which may be taxed in each of said counties and cities. By an act of the General Assembly, approved June 14, 1893, entitled "An act for the government of cities of the third class" (to which class the city of Frankfort, whose corporate name is the board of councilmen of the City of Frankfort, belongs) the cities of that class are authorized, so far as the legislature can confer such power, to assess annually, levy and collect taxes on all the property of said banks and corporations located in said cities, and also on such portions of the "franchise" of such banks or corporations as may, by the board of valuation and assessment, be assigned to such cities for local taxation.

By said act the common councils of said cities are authorized at their first meeting in April in each year to elect a collector of taxes, who, among other duties, is required "to list for taxation any property he may find has been omitted, and he shall report such lists to the city clerk, who shall indorse same on the tax book, and charge the collector therewith, and the collector shall have the same power to collect said lists as if they had been originally listed by the assessor."

94 And in pursuance of the power so granted the common council of the city of Frankfort did, at its first regular meeting in April, 1894, elect the defendant, James M. Hallnan, to the office of tax collector for the year 1894, and he has been since then and is now such collector.

Prior and up to the enactment of the said act of June 14, 1893, the city of Frankfort was a municipal corporation under the name aforesaid, having for its city charter an act of the General Assembly, approved March 6, 1869, entitled "An act to amend and reduce into one the several acts relating to the city of Frankfort," by the provisions of which the said city was authorized so far as the legislature could confer such powers, to assess annually, levy and collect taxes "on real estate within the limits of said city, and all bank stock, bridge stock, manufacturing stock or any other kind of stock, money, notes, or bonds of cities, towns, corporations, or State, choses in action, and all personal estate of every kind not exempt by law from execution, belonging to the citizens of the city of Frankfort, and any capital or other property belonging to any other corporation or citizen of any other place employed in said city." Under each of the acts of March 16, 1869, and June 14, 1893, it is required that the assessment of property for taxation shall be made as of the 10th day of January in each year. Each of the said acts of the General Assembly are referred to and made part of this petition.

The plaintiff states that said city of Frankfort did, in accordance with its charter, respectively, order in due form and at the proper time assessments for taxation for the years 1892-'3 and 1894 upon all the property provided by said charter respectively to be assessed; but it alleges that neither it, nor any part or portion of its property,

rights or franchises, is or was assessable or taxable in either of the years 1892–'3 or 1894 for city or any other purpose under the said act of November 11, 1892 (chapter 103 of the acts of 1891–'2–'3), nor for city purposes under either of said city charters or any law. But no assessment was made or attempted to be made against it for said city in either of said years nor at any time except as hereinafter stated.

But notwithstanding its non-liability for assessment for taxation, and especially for municipal or county purposes, the said board of valuation and appraisement provided for in section 1, article 3, chapter 103 of the acts of 1891–'2–'3 aforesaid, have, without warrant or authority, assumed to assess and value, and has assessed and valued plaintiff's franchise, which is, as before stated, a term used to describe all of the corporation property and assets other than its tangible property, for the tax years of 1893 and 1894, and to make apportionment thereof as aforesaid, the part thereof apportioned by reason of its said principal bank in Frankfort in the county of Franklin as taxable by said city and county, being for the year 1893 fixed and valued at $495,919.00 and for the year 1894 at $503,400.00 and the auditor, with like want of authority in law,
95 has certified the said valuation and apportionment for each of said years to the county clerk of Franklin county as liable for county and city taxation, and said clerk has delivered attested copies of the auditor's said certificate to the officers respectively charged with the collection of taxes for that county and city. And the defendant, James M. Hallnan, collector of taxes for said city for the year 1894, has, without warrant of authority in law and without notice to or the knowledge of this plaintiff, assumed to list, and has listed against plaintiff for taxation by said city as omitted property, and has reported such lists to the city clerk, who has endorsed same on the tax book as of and for the year 1892, property described as "notes, money, choses in action and other property of the value of $500,000.00" and as of and for the year 1893 property described as "notes, money, choses in action and other property of the value of $495,919.00" and as of and for the year 1894 property described as "notes, money, choses in action and other property of the value of $503,400.00." The plaintiff alleges that the property so attempted to be listed for taxation by the defendant, Hallnan, collector of taxes as aforesaid, was the intangible property in the hands of its said principal bank at Frankfort and was reported by plaintiff to the said "board of assessment and valuation," and was by said board fully estimated and covered in said board's assessment and valuation aforesaid of plaintiff's franchise for the years 1893 and 1894.

The plaintiff states that it was compelled, by the contract between it and the State, made by the said act of May 17, 1886, known as the "Hewitt bill," and its agreement to pay the tax as prescribed by the first section of the second article of the said act, in full of all tax, State, county and municipal, to pay, and it did pay into the State treasury on the 1st day July, 1892, the taxes prescribed by the said section, to wit, the sum of $7,760.30, in full of all tax or bonus

against plaintiff and its branches for the year 1892, which was so accepted by the State of Kentucky.

Yet the defendant, The City of Frankfort, is claiming and demanding for it under the pretended assessment of the defendant, Hallnan, collector as aforesaid for the said year 1892, as taxes due it, the sum of $6,250.00. And said city is claiming under said alleged assessment against it of $495,919.00 for 1893, as city taxes, the sum of $6,446.94, and under said assessment of $503,400.00 for 1894 the sum of $7,047.60, and $1,349.45 for penalties, and 10 per cent. interest on said alleged taxes for 1893 and 1894. And in addition, on the said alleged assessment and valuation of its "franchise," the county of Franklin and city of Henderson, and the city of Georgetown and counties of Henderson and Scott, are each claiming against plaintiff sums for county and city taxes, respectively, for the said years 1893 and 1894, which said several sums claimed each year for local taxes by said cities and counties, when added to the amount paid by plaintiff into the treasury as aforesaid for
96 each of those years, will aggregate an amount largely in excess of the amount that could be claimed of the plaintiff either under its charter or under the said act of May 17, 1886. It avers that it does not owe to the city of Frankfort, or the city of Henderson or Georgetown, or the county of Franklin, or Henderson, or Scott, or either of them, the said sums, respectively, or any part of either of said sums; that the defendant, James M. Hallnan, collector as aforesaid, had no power or authority under the charter of the city of Frankfort, or otherwise, to make the said alleged assessments or either of them; that the said "board of assessment and valuation" had no power or authority to make the said assessments and valuations of plaintiff's franchise or either of them; that the said charter of the city of Frankfort, and the said act entitled "An act relating to revenue and taxation," which became a law November 11, 1892, and each of them, in so far as they, or either of them, prescribe additional or different taxation of plaintiff or its property for the benefit of cities or counties, are repugnant to and in violation of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of contracts, and were, and are, wholly void.

It alleges that the granting and acceptance of its charter and the acts extending and continuing the same, which were accepted and acted upon by it, constituted a contract between the State on the one part and this plaintiff and its stockholders on the other part, continuing during the legal existence of plaintiff's corporation, and that the State of Kentucky never had, and now has not, the right to *appeal*, alter or annul said agreement, or the rights conferred by said charter limiting the right of the State to impose a tax on plaintiff or its property without its consent.

The plaintiff further states that it did, in the manner and form hereinbefore stated, and upon the consideration recited in the first and fourth sections of the second article of the said act, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, give its consent to the levying of the tax

prescribed by the said first section of the second article of said act, and agreed to pay the same, and to waive and release its rights under its charter to a different mode or smaller rate of taxation than is in said first section provided. Such consent and waiver was made in good faith by it, and under the belief that the agreement so made would endure during its corporate existence. And it now submits that such is the true construction of said act, and that the proposition from the State contained in said act, and its acceptance by plaintiff in the manner and form stated, constituted a contract which the State cannot annul or repeal, and which is binding on the State in all its departments and subdivisions. The judgment of the court is asked upon this submission; and if on final hearing it is adjudged that the said act of May 17, 1886, is still operative as the law regarding plaintiff's taxation, the plaintiff, having tendered full compliance with said law, is still ready and willing to pay to the State
97 treasury any balance due thereunder, and to still be bound by its assent to its terms. But if the said act and agreement be not binding on the State, and if it be held to be abrogated by the State, then the plaintiff insists that it is entitled to all its rights under its charter, extending as aforesaid, and that it cannot be taxed at a higher rate or in a different method than therein provided. Nevertheless, the plaintiff says that the defendants, The City of Frankfort and its tax collector, James M. Hallnan, are claiming that plaintiff is indebted to the said city in the sum of $6,250.00 as city taxes for said city, as aforesaid for the year 1892, and $6,446.94 as city taxes for said city, as aforesaid, for the year 1893, and $7,047.10 as city taxes for said city, as aforesaid, and $1,349.45 as penalty and interest on said taxes for 1893 and 1894, and the defendant, Hallnan, collector of taxes for said city, is threatening to, and is about to levy on and sell the plaintiff's property and real estate in the city of Frankfort; that he has already attempted to levy upon personal property belonging to the plaintiff, and it says that he will forthwith make said levy and proceed to sell said property to make the sums aforesaid claimed as taxes due said city, unless restrained by the order of this court, and that such levy and sale would result in putting a stain and cloud upon the plaintiff's title to its said property, and would produce great and irreparable injury and hardship to the plaintiff, and stop the business of its principal bank in Frankfort. That it is without adequate remedy at law. The said collector of taxes, unless restrained and enjoined, will proceed forthwith to make said levy, and advertise and sell such property. The injunction herein prayed for has never been applied for, or refused by any court, judge, or any one else.

Wherefore the plaintiff prays that the defendants and each of them be enjoined from making any levy or distraint on or selling any property of plaintiff for the said sums, or any of them, or any part of either of them, alleged to be due from the plaintiff as taxes to the city of Frankfort, or taking any other proceedings or means to collect or recover the same, and that the city of Frankfort be enjoined from assessing or attempting to assess, or from collecting or attempting to collect hereafter any tax upon the plaintiff, its

property or franchise, except upon its real estate used in conducting its business, for the purposes of said city. It prays that the said tax and said charters of said city, and the said act of November 11, 1892, be in their application to plaintiff adjudged illegal, unconstitutional and void. It prays for a temporary injunction to restrain the commission of said wrongs during the pendency of this action; that on final hearing said injunction be made perpetual, and that plaintiff be adjudged its costs and all relief, general or special, to which in law or equity it may be entitled.

JOHN W. RODMAN,
Attorney for Plaintiff.

98 Thomas Rodman says that he is the president of the Farmers' Bank of Kentucky, and that the foregoing statements are true, as he verily believes.

THOMAS RODMAN.

Sworn to and subscribed before me this 6th day of September, 1894.

JOHN A. BRISLAN,
[SEAL.] *Notary Public for Franklin County, Kentucky.*

EXHIBIT WITH PETITION.

FARMERS' BANK OF KENTUCKY, FRANKFORT, *Dec.* 6, 1887.

At an adjourned meeting of the stockholders of the Farmers' Bank of Kentucky held in their banking-house in the city of Frankfort on Tuesday, the 6th day of December, 1887, a majority in interest of a quorum of said stockholders being present, it was resolved that the consent of said bank be and is hereby given to the levying and payment of the tax as provided in and by article II, chapter 1233, of "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and said bank hereby waives and releases all right under its charter to a different mode or smaller rate of taxation.

Which order and consent of the stockholders was ordered to be certified to the governor as required by said act.

In testimony whereof the signature of the president and the corporate seal of the bank are hereto attached the date above written.

THOMAS RODMAN, *President.*

Attest:
[SEAL.] GRANT GREEN, *Cashier.*

A copy.
Attest: L. C. NORMAN,
Auditor of Public Accounts.

Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James M. Hallnan, Collector of Taxes for the City of Frankfort, Defendants.
} Injunction Bond.

I undertake and am bound to the defendants, Board of Councilmen of the City of Frankfort, and James M. Hallnan, tax collector for the city of Frankfort, to pay to said defendants the damages they may sustain not exceeding the sum of twenty thousand dollars ($20,000), if it be finally decided that the order of injunction herein ought not to have been granted.

This September 6, 1894.

THOMAS RODMAN.

Attest: THOS. B. FORD,
Clerk Franklin Circuit Court,
By C. E. JAMES, *D. C.*

99 Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James M. Hallnan, Collector of Taxes for the City of Frankfort, Defendants.
} Order of Injunction.

The defendants, Board of Councilmen of the City of Frankfort and James M. Hallnan, collector of taxes for the city of Frankfort, and each of them, are hereby enjoined and restrained from making any levy or distraints, or selling any property of the plaintiff for the sums, or any part of them, or any part of either of them, alleged to be claimed by the defendant Board of Councilmen of the City of Frankfort to be due it from the plaintiff for taxes for the years 1892, 1893 and 1894, or taking any other proceedings or means to collect or recover the same, during the pendency of this action, and the Board of Councilmen of the City of Frankfort is enjoined from assessing or attempting to assess, or from collecting or attempting to collect, any tax for the purpose of said city upon the plaintiff, its property or franchise, except upon its real estate in said city used in conducting its business, during the pendency of this action and until this case shall have been heard by the chancellor of this court.

This September 6, 1894.

THOS. B. FORD,
Clerk Franklin Circuit Court,
By C. E. JAMES, *D. C.*

Franklin Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and James M. Hallnan, Tax Collector of the City of Frankfort, Defendants. } Order of Injunction.

Upon the application and motion of the plaintiff for an injunction, as prayed for in the petition, this day came the plaintiff and the defendants by their respective attorneys, and the defendants entered their appearance to this application and motion, and waived any and all notice that might be required, and gave consent that the said application and motion may now be acted upon; and it being made to appear to my satisfaction that the judge of the Franklin circuit court is now absent from Franklin county, and that great and irreparable injury will result to the plaintiff if an injunction be not immediately granted, upon consideration of the petition herein the clerk of the Franklin circuit court is directed to issue an order of injunction agreeable to the prayer of the
100 petition, enjoining and restraining the defendant-, The Board of Councilmen of the City of Frankfort, and James M. Hallnan, tax collector of the city of Frankfort, and each of them, from making any levy or distraint, or selling any property of the plaintiff for the sums, or any part of them, or any part of either of them, alleged to be claimed by the defendant, The Board of Councilmen of the City of Frankfort, to be due it from the plaintiff for taxes for the years 1892, 1893 and 1894, during the pendency of this action, and enjoining said Board of Councilmen of the City of Frankfort from assessing or attempting to assess, or from collecting or attempting to collect any tax, for the purposes of said city, upon the plaintiff, its property or franchise, except upon its real estate in said city used in conducting its business, during the pendency of this action. But said clerk shall not issue such order of injunction until bond shall have been executed by one or more sufficient sureties of plaintiff, to the effect that plaintiff shall pay to the defendants such damages as they may sustain, not exceeding $20,000, if it be finally decided that the order of injunction herein ought not to have been granted.

September 6, 1894.

B. G. WILLIAMS,
Presiding Judge of the Franklin County Court.

On September 7, 1894, the sheriff made his return, viz:

Executed on the Board of Councilmen of the City of Frankfort by delivering to Ira Julian, mayor of said city, a true copy of the within, and by delivering a true copy of the within to James Hallnan.

September 7, 1894.

R. D. ARMSTRONG, *S. F. C.*,
By N. SULLIVAN, *D. C.*

On September 10, 1894, the following order was entered:

Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT. } Order.

The defendants, The Board of Councilmen of the City of Frankfort, and James Hallnan, tax collector for the city of Frankfort, hereby enter their appearance to the petition filed in this case on the — day of September, 1894, and consent*ed* that this cause be now placed upon the docket of this court for proceedings, the same as if process had been served 10 days before the 1st day of this term, and defendants filed a general demurrer to the petition.

101 Said demurrer is in words and figures as follows:

Franklin Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c., Defendants. } Demurrer.

The defendants, The Board of Councilmen of the City of Frankfort, and James Hallnan, tax collector for the city of Frankfort, say that the plaintiff's petition herein does not state facts sufficient to constitute a cause of action, and demur to said petition.

HUGH RODMAN,
City Attorney,
W. H. JULIAN,
For Defendants.

On September 25th a judgment was entered, viz:

Franklin Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c., Defendants. } Judgment.

This day came the parties by their attorneys, and this cause having been submitted upon the defendants' demurrer to the plaintiff's petition, and the court, being now sufficiently advised, is of the opinion and adjudges that the defendant city had and has no authority or right to levy, assess or collect any taxes against the plaintiff for the year 1892, and that for that year the plaintiff properly made its report to the auditor, and paid its taxes into the treasury under the provisions of the Hewitt revenue statute; that for the years 1893 and 1894 the defendant Hallnan, tax collector for the city of Frankfort, or said city had no power or authority to assess for taxation the intangible property of the plaintiff described in the

petition, but that the same was properly assessed for taxation by the State board of assessment and valuation in assessing the franchise of plaintiff, as provided for in the act of November 11th, 1892; and that for the delinquency of plaintiff in the payment of the city of Frankfort on so much of the assessments of its franchise for the years 1893 and 1894 as has been apportioned for taxation by said city defendants have no power or authority to collect any penalty or interest.

It is therefore adjudged that the defendants' demurrer to the petition be overruled, and they declining to answer, but electing to stand by their demurrer, it is further adjudged that the preliminary injunction heretofore granted herein in so far as the same enjoins the defendants from collecting from the plaintiff any sum for taxes against it for the year 1892, and any sums as penalty or in-
102 terest for delinquency in payment of taxes on its franchise for the years 1893 and 1894, be and the same is hereby made perpetual, and that so much of said injunction as enjoins the defendant- from collecting from the plaintiff the sums set out in the petition as taxes on franchise for the years 1893 and 1894, be and the same is hereby dissolved.

The defendants except to so much of the foregoing judgment as overrules their demurrer to the plaintiff's petition and perpetuates the injunction herein for any purpose. And the plaintiff excepts to so much of the foregoing judgment as dissolves in part its injunction herein and as adjudges that plaintiff's intangible property or franchise was assessable by the board of assessment or otherwise than as contended for in the petition, and prays an appeal to the court of appeals which is granted; and on motion of the plaintiff so much of the injunction herein as is dissolved by this judgment is hereby continued in force during the pendency of the appeal herein granted upon the plaintiff executing, before the clerk of this court, by one or more good sureties, bond conditioned that the plaintiff will, if this judgment dissolving the injunction is affirmed, pay to the defendants all damages they or either of them may sustain by reason of the continuance of such injunction pending the appeal.

On September 26, 1894, the following bond was filed in this office, viz:

Franklin Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and J. M. Hallnan, Tax Collector for the City of Frankfort, Defendants. } Bond.

Whereas by judgment rendered in the above-styled cause in the Franklin circuit court on the 25th day of September, 1894, the temporary injunction previously granted the plaintiff against the defendant- was in part dissolved and from so much of said judgment as dissolved in part the said injunction, an appeal was asked of and

granted by said court; and in order granting said appeal it was ordered that the injunction dissolved should continue in force pending the appeal upon the plaintiff's executing bond as in the judgment provided. Now I, Thomas Rodman, surety, hereby covenant to and with the defendants, Board of Councilmen of the City of Frankfort, and J. M. Hallnan, tax collector for said city, that the plaintiff will, if said judgment dissolving the injunction is affirmed, pay to the defendants all damages they or either of them may sustain by reason of the continuance of such injunction pending the appeal.

THOMAS RODMAN.

Attest: THOS. B. FORD, *C. F. C. C.*

103 STATE OF KENTUCKY, } *sct:*
Franklin County, }

I, Thomas B. Ford, clerk of the Franklin circuit court, do hereby certify that the foregoing thirty-one pages of typewritten matter contains a true and complete copy of all the pleadings, exhibits, &c., in the case of The Farmers' Bank of Kentucky *vs.* The Board of Councilmen of the City of Frankfort, &c., as appears from the records of my office.

Given under my hand this 2nd day of October, 1894.

THOS. B. FORD,
Clerk of Franklin Circuit Court,
By C. E. JAMES, *D. C.*

Upon which transcript was endorsed the following statement:

FARMERS' BANK OF KENTUCKY, Appellant,
vs.
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT and JAMES H. HALLNAN, Tax Collector for the City of Frankfort, Appellees. } Statement.

The judgment sought to be reversed is on page twenty-eight of record, and was rendered at the September term, 1894, of the Franklin circuit court. The appeal was granted by the court below. Both parties good for costs.

JOHN W. RODMAN,
Attorney for Appellant.

Afterwards, at a court of appeals, begun and held for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 4th day of October, A. D. 1894, the following order was entered:

THE FARMERS' BANK OF KENTUCKY
versus
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, &c. } Franklin.

Came the parties by counsel, and on their motion and by consent it is ordered that this cause be docketed.

The appellant moved the court to advance this case, together

with the case of Farmers' Bank of Kentucky against Franklin County and the case of Farmers' Bank of Kentucky against City of Henderson, and hear them with the case of Commonwealth, &c., *vs.* Farmers' Bank of Kentucky, which was continued for oral argument at the last term of this court, and the cause be submitted on the motion.

104 Afterwards, at a court of appeals held as aforesaid, on October 23, 1894, the following order was entered:

FARMERS' BANK OF KENTUCKY *vs.* CITY OF FRANKFORT.	Franklin.
SAME *vs.* FRANKLIN COUNTY, &C.	Franklin.
SAME *vs.* CITY OF HENDERSON.	Henderson.

The court being advised, it is ordered that these causes be advanced, and set for hearing with the case of The Commonwealth, &c., *vs.* Farmers' Bank of Kentucky, on the argument docket for the next term of this court.

Afterward, at a court of appeals held as aforesaid, the following order was entered:

COMMONWEALTH, &C., *vs.* FARMERS' BANK OF KENTUCKY.	Franklin.
FARMERS' BANK OF KENTUCKY *vs.* CITY OF FRANKFORT, &C.	Franklin.
SAME *vs.* FRANKLIN COUNTY, &C.	Franklin.
SAME *vs.* CITY OF HENDERSON.	Henderson.

By agreement of all the parties, and on their motion it is ordered that these seventeen cases be heard together, and said causes coming on to be heard, were argued by A. P. Humphrey for the banks and Ira Julian for the Commonwealth, counties and cities, and laid over until tomorrow for further hearing.

Afterward, on the 5th day of March, 1895, the following order was entered herein:

These causes, again coming on to be heard, were argued by D. W. Lindsey for the banks and W. McD. Shaw and Hugh Rodman for the counties and cities, and laid over for further hearing on tomorrow.

Afterward, on March 7, 1895, this order was made:
These causes, again coming on to be heard, were argued by Wm. Goebel for the banks and H. C. Barker for the cities and counties and laid over for further hearing on tomorrow.

And afterward, on March 8, 1895, this order was made:
These causes, again coming on to be heard, were argued by Jno. W. Rodman and T. L. Edelen for the banks, and laid over for further hearing on tomorrow.

And afterward, on March 9, 1895, this order was made:
These causes, again coming on to be heard, were argued by Jas. P. Helm for the banks, and laid over for further hearing on next Tuesday.

Afterward, on March 12, 1895, this order was made:
These causes, again coming on to be heard, were argued by Wm. J. Hendrick for the Commonwealth, and submitted.

105 Afterward, at a court of appeals held as aforesaid, on the first day of June, 1895, the following judgment was entered:

FARMERS' BANK OF KENTUCKY, Appellant, *versus* BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Appellee.	Appeal from the Franklin Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erroneous. It is therefore considered that said judgment be reversed and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appellant recover of the appellees its costs herein expended.

Judges Lewis, Paynter and Guffy dissenting.

Dissenting opinion by Judge Paynter.

At the same time, to wit, June 1, 1895, the court, through Chief Justice Pryor, delivered the following opinion, to wit:

The Bank of Kentucky, the Northern Bank, the Farmers' Bank and other State banks; the National Bank of Covington and other national banks, are in this court by their presidents and directors, some of them appealing from judgments imposing upon them taxation for county and municipal purposes, and others standing as appellees in cases relieving them from such local burdens. The legislation imposing such burdens is found in the Kentucky Statutes under the title of *revenue and taxation*, and is based on sections 174 and 175 of the present constitution. Section 174 pro-

vides: "All property whatever, owned by natural persons or by corporations, shall be taxed in proportion to its value, unless exempted by this constitution, and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation, based on incomes, licenses, or franchises."

Section 175 provides: "The power to tax property shall not be surrendered, or suspended, by any contract or grant to which the Commonwealth shall be a party."

It is manifest by reason of section 175, the right of the legislature no longer exists, of surrendering the power to tax property, or by contract to bind the State to any other mode of taxation than that found in the constitution, and all property, whether belonging to corporations or individuals, must pay the same rate of taxation. The appellants in these cases (the banks) are claiming that prior to the adoption of the present constitution a contract had been entered into between them and the State, by which, in consideration of the surrender by them of certain rights found in their respective charters, and by their consent and agreement to pay a larger
106 State tax than individuals paid, or their charters required, the State agreed not to impose upon them any local burdens, and the important inquiry in these cases is, "Was such a contract entered into between the banks and the State based on a consideration binding the State on the one side, and the banks on the other?"

The statute under which this contract is claimed to have been made is found in the General Statutes under the title of revenue and taxation, sections 1 and 4 of article 2, and known as the Hewitt bill.

Counsel for the banks in the discussion of these cases classified the banks as follows: 1st, the banks chartered prior to the act of 1856, when the power to amend or repeal was not a part of the charter or reserved by any general law; 2d, banks chartered after that date, when by a general law the right to annul or repeal the charters was expressly reserved; 3d, the national banks.

We shall treat all the cases as one, in considering the application of the Hewitt act, to the banks accepting its provisions.

Prior to the adoption of the present constitution it seems to have been the settled policy of the State to exempt banking institutions from local taxation, and requiring them to pay a larger tax to the State upon its property, than that paid by the individual tax-payer, and this additional tax went into the State treasury instead of being applied to municipalities in the discharge of local burdens. The framers of the constitution, not approving of this policy, established a fixed rule of taxation, and made all taxation alike upon property, whether for State or municipal purposes, applying the rule for municipal purposes to the territory in which the tax is imposed. It is argued, and no doubt true, that a discrimination must exist between banks located where heavy local burdens are imposed, and like institutions in more favored localities, where lighter or no local

burden exists, and while the fact that the banks in the commercial centres of the State are taxed two and a quarter dollars on the hundred under the present system (local and State) and those in an adjoining town or county only one per cent. may work a hardship, and prevent competition or drive the bank thus heavily taxed to locate elsewhere, yet this, under the old system was a question of policy only, and the framers of the present constitution in adopting the *ad valorem* system, left no room for classifying property, so as to make any discrimination in the subjects of taxation, and the suggestion of counsel can only be considered in determining the intent of the legislature in passing the Hewitt act, and that of the banks in accepting it.

It may be well, however, to ascertain the condition of the banks (and particularly those chartered before the year 1856), with reference to taxation, and the circumstances attending the legislation resulting in the passage of the Hewitt bill, in order to ascertain whether or not it was the purpose of the State to surrender in part its power of taxation, and that of the banks to relinquish any right they could have asserted against the State by reason of their charters. The bank- in existence prior to the act of 1856
107 were claiming their charter contracts, by which only a tax of fifty cents on each share of one hundred dollars of stock could be imposed.

The national banks claimed that they were entitled to be taxed like the State banks and were not liable for local burdens, and, besides, that their surplus, if in greenbacks or other non-taxable securities, could not be taxed under their charters from the Federal Government.

The State claimed the old banks were taxed for too small an amount, and the banks chartered since the year 1856 were resisting any discrimination between such institutions and the old banks. Under these circumstances the legislature devised a mode of taxation that prevented a discrimination that would otherwise exist, and by the provisions of the Hewitt bill said to all the banks, State and national, "We will impose a tax of seventy-five cents on each share of your capital stock equal to one hundred dollars, and in addition a tax on your surplus, and this shall be in full of all tax, State, county, and municipal, provided you will accept the act imposing the tax with the condition annexed." This act reads:

"Shares of stock, in State and national banks and other institutions of loan and discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars of stock therein, owned by individuals, corporations or societies, and said banks, institutions, and corporations shall, in addition, pay on each one hundred dollars, of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county and municipal." The 7th section of the act further providing that "nothing herein contained shall be construed as

exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations for conducting their business, but the same may be taxed for county and municipal purposes as other real estate is taxed."

Section 4 of this act provided: "That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular meeting thereof, may give its consent to the levying of said tax, *and agree* to pay the same as herein provided, *and to waive and release all right under the act of Congress*, or under the charters of the State banks, to a different mode, *or smaller rate of taxation, which consent or agreement with the State of Kentucky* shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth, *and upon such agreement and consent being delivered, and in consideration thereof*, such bank and
108 its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid, during the corporate existence of such bank."

Section 5 of the act provided: "The said banks may take the proceeding authorized by section 4 of this act, at any time until the meeting of the next General Assembly, provided they pay the tax provided in section 1 from the passage of this act." Section 6 provides: "This act shall be subject to the provisions of section 8, chapter 68, General Statutes."

The banks involved in this litigation accepted in writing the provisions of the act and filed their written acceptance with the governor under corporate seals. The banks incorporated before the act of 1856 surrendered what they claimed to be their charter contracts, by which they were taxed only fifty cents on their shares of stock of one hundred dollars. The national banks yielded their right to deduct from the value of their stock their surplus consisting of nontaxable securities and their claim to be taxed as the old banks, and most of the State banks uniting to prevent any discrimination, all accepting the proposition made by the State and agreeing to pay seventy-five cents on each share of stock of one hundred dollars in value, and the additional tax mentioned in the article.

It is conceded (and we think it clear) by counsel for the city of Louisville that prior to the passage of the Hewitt bill, in the year 1886, the Bank of Kentucky had an irrevocable contract to be taxed at the rate of fifty cents on each share of one hundred dollars, and the same may be said of all the banks chartered prior to the act of 1856, but it is further contended that the act, as well as the contract under it, were both subject to repeal by reason of the reserved power contained in section 6 of article 2. Again, it is contended by counsel for the city of Frankfort that the grant to the banks was without any consideration and the renewals of the charters of the old banks, as they are designated, placed them within the provisions of the act of 1856, and by the Attorney General that the State had no power to surrender this right of taxation; and the contract, if made, is not binding.

This court, in the case of The Franklin County Court against The

Bank of Kentucky, reported in 87 Kentucky, in an opinion delivered by Chief Justice Bennett, held that the renewals of those charters did not affect the contracts made with the State under the original grant, and if disposed to reconsider the decision rendered in that case, it could not affect the issue involved on the present appeals.

At the date of the passage of the Hewitt bill the Franklin circuit court had decided that the charter contract still existed, and after the acceptance by the banks of the provisions of the Hewitt bill this court affirmed that judgment. It is apparent that article 2 in the Hewitt bill was adopted by the legislature with a view of equalizing the burdens of taxation as between the banks, and to relieve them from the burden of local taxation during their
109 corporate existence; but it is insisted there was no consideration for this partial exemption.

If there was a binding contract between the *old banks* and the State to pay a tax of only fifty cents on each share of stock, and the banks surrendered their contract or their rights under it, and agreed to pay seventy-five cents to the State instead of forty-two and a half cents, it seems to us this would be a consideration sufficient to uphold any such contract with the State, if the power existed with the State to make it, and the fact that such a power existed has been too often decided by this court, as well as the Supreme Court, to require authority in support of it. It is plain also that these banks, including the national banks, surrendered their rights, not only to settle the question as to local taxation, but to prevent competition or any discrimination between banks located in commercial centers of the State and those outside of such localities, where no heavy burden for local taxes were being levied, and therefore, the consideration moving from the old banks, was for the benefit of all the banks accepting the terms of the contract. The legislature was attempting to avoid all discrimination between these moneyed institutions, and therefore its exactions from the old banks and the national banks being acceded to, it resulted to the benefit of the banks organized after as well as before the act of 1856 as to such banks uniting with the old banks in accepting the Hewitt bill. In this statute imposing the tax of seventy-five cents, and its acceptance on the conditions proposed, there exists every element of a contract between the State and the banks and with such a consideration as will uphold it. No reasonable doubt can be entertained that such was the purpose of the parties to it.

It is contended that if a contract was entered into, the provisions of the present constitution, and subsequent legislation under it, operated to repeal not only the statute, but the contract made by virtue of its provisions, and this power existed by reason of the 6th section of the article making it subject to the provisions of section 8 of chapter 68 General Statutes, declaring that "this shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be plainly expressed;" provided, that "whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

Assuming, as we think was the legislative intent, the word *act* in section 2 of the Hewitt bill, was used as synonymous with the word *article*, and therefore the reservation of the power on the part of the legislature, was the right to amend or repeal the article in which is contained the proposition by the State to the banks in reference to taxation, it by no means follows that a contract made by virtue of its provisions can be abrogated at the will and pleasure of the legislature. The distinction between the power of the legislature to repeal an act and the right to annul, by repeal or otherwise, a contract made under it, is manifest—and while under the present constitution the State can make no contract by which the exercise of the taxing power can be lessened or any part of its sovereign power in that regard relinquished, under the former constitution property might not only be classified in imposing taxation, but the State could discriminate between the classes when providing the rate of taxation, and this doctrine has been recognized by numerous decisions of this court and sustained in like cases by numerous decisions of the Supreme Court.

The general rule in regard to legislation is, that one legislative body cannot bind a subsequent legislature to its action in purely legislative matters, but when it comes to matters of contract, if the State has the power to make it, its terms and conditions are as obligatory on the State as if entered into between two of its citizens, and an attempt to cancel such a contract, without the consent of the party with whom it is made, is in direct violation of that clause of the Federal Constitution providing that "no State shall pass any law impairing the obligation of contracts." Sec. 10 of art. 1, U. S. Constitution.

That the State may enter into such contract was held by this court as early as the year 1839, in the case of Johnson *vs.* The Commonwealth, reported in 7 Dana, 442, where there was an effort to tax the shares of stock in a bank in excess of the terms of the contract, and this court held that the contract placed a limitation on the power. In the case of The Farmers' Bank against The Commonwealth, reported in 6th Bush. it was held the bank could not be taxed beyond its charter rate, as fixed by the contract, and in the late case of The City of Frankfort *vs.* The Bank of Kentucky and others, reported in 87 Kentucky, the same doctrine was announced. The question then arises, Did the reservation of the power to amend or repeal this article of the Hewitt law empower the legislature or the framers of the constitution to disregard this contract between the banks and the State? We are satisfied, after a careful consideration of this question, that the parties making it never contemplated or intended that the act of 1856 should apply to this contract after its acceptance by the banks, and that such an acceptance was necessary to make the contract complete between the parties.

The legislature, at the time this contract was made, recognized the right of the Bank of Kentucky and the banks chartered prior to 1856, to stand upon their charter rights, or if not, the right of the banks as against the State on this subject of taxation had found

its way to the courts, and had been decided adversely to the State. The legislature thought the tax of fifty cents too small. The old banks claimed an irrevocable contract. The national banks could only be taxed as authorized by the Federal Congress. The new State banks were subject to such taxation as the State might see proper to place upon them, and to make them liable for
111 these local burdens would be to end their existence or cause them to seek shelter under the Federal banking act, and with a view of placing the entire matter at rest and placing the banks on an equal footing, the legislature said to all the banks: "If you will agree to pay seventy five cents on each share of stock equal to one hundred dollars, &c., it shall be in full of all tax, State, county and municipal." It said to the old banks: You must relinquish your right to a smaller rate of tax, and this must be done not by your president and directors, but by the consent of the stockholders in writing, and delivered to the governor, as evidence of your good faith." The banks accepted the proposition made them in the manner pointed out by the act, and from that time to the adoption of the present constitution the contract was adhered to by both the State and the banks. It is now argued the banks, and particularly those with charter contracts for a smaller rate of taxation, surrender those charter rights and agree to pay a higher rate of tax under an act that authorized any subsequent legislature to repeal the contract at its will and pleasure. No rational view of this agreement should lead to the conclusion that business men at the head of those institutions would relinquish every right they had acquired under their charters that an increased burden might be placed upon the banks they represented.

In the contention that the 6th section of the article reserves this power of repeal, counsel overlook the fact that, by the express terms of the section by which this reserved power is retained it is provided that "*no amendment* or repeal shall impair other rights previously vested." The execution of the agreement between the State and the banks, based on a consideration such as appears from the act itself, connected with its acceptance by the banks, vested in the latter rights of which they could not be divested without their consent, the chief of which was the payment of a specified tax to the State during their corporate existence.

The State waived its right to tax these banks for local purposes (except their realty), and required in lieu thereof an additional tax to be paid into the State treasury. In this way, the State granting the franchise derived the benefit, instead of the municipal government, while under the present system the difference between 42½ cents and 75 cents, with tax on surplus amounting to $125,000, is taken from the revenue proper and applied to the municipalities where the banks are located.

In the case of the State against the Green & Barren River Navigation Company reported in 79th Ky., this court held, with the act of 1856 in full force, that the State had no power to annul a contract that had been executed between the State and the company, and that the repeal of the charter to the extent it deprived the com-

pany of its contract rights acquired under it was in violation of the constitution. In that case the court said: We cannot assent
112 to a doctrine that will allow the State to alter or abolish such contracts, whenever, in the opinion of the legislature, the necessities of the public or the interest of the State require it." The case of The Commonwealth *vs.* Owensboro, &c., R. R. Co., 95 Ky., 60, determines in effect the question involved here. In the year 1884 the legislature passed an act to encourage the construction of railroads, and in doing so, relieved them from taxation for a limited period. The act provided "That all railroads which may hereafter be built within this Commonwealth under existing charters, or under charters which may hereaftor be granted, shall be exempt from all taxation under the laws of this Commonwealth for the period of five years from the date of the beginning of the construction of the new roads." The State claimed the right under the act of 1856 to repeal the law, claiming this had been done by legislation, as in the case before us, and attempted to coerce payment of taxes, when the five years from the beginning of the construction of these roads had not expired. The court, in response to the argument to exact the tax and the application of the act of 1856 to its provisions, said: "It is sufficient to say of this proposition, which, even at first blush, strikes us as extraordinary and unjust, if attempted to be applied to those of the appellees who accepted the offer of the State, and expended their money on its exemption pledge, that the act of 1856 reserving the right to repeal or amend charter privileges has no application to the law of 1884, which, as said before, was a general law, and affected all alike who accepted its provisions, or acted on the strength of them."

Counsel for the local governments argue the questions involved as if there was a perpetual grant to those corporations, and therefore the power of appeal must of necessity have been reserved. The limitation of the grant extends to the life of the corporate charter, and with the banks existing prior to the act of 1856 these charters expire in ten or twelve years, and hence the policy of the State, if viewed in that light, was wise, because it was increasing the State revenue from fifty to seventy-five cents for a fixed and certain period.

The framers of the constitution, in adopting that instrument, were not looking to past legislation on this particular subject, but were creating an organic law for the future welfare of the State, leaving the rights of those protected by either the State or Federal Constitution undisturbed, and if the attempt to repeal vested rights has been made, the framers of the present constitution would have been as powerless to accomplish such a purpose as the legislature in session after its adoption.

The Supreme Court decided a somewhat similar question on a writ of error to the court of appeals of New Jersey, in the case of New Jersey *vs.* Yard, reported in 95 U. S., 110. By an act of the legislature passed in March, 1865, the legislature of New Jersey enacted that the Morris and Essex Railroad Company should pay a

tax of one-half of one per cent., to be paid by the company
113 to the State whenever the net earnings of the company amount to seven per cent. on the cost of the road, to be paid at the expiration of one year from the time when the road shall be open and in use to Phillipsburg, and annually thereafter, *which tax shall be in lieu and satisfaction of all other taxation and imposition whatever by or under the authority of this State.*

The 20th section of the original act of incorporation, reserved to the legislature the right to alter, amend or repeal the act whenever it should think proper. The act of 1865 was an amendment to the original grant and in regulating the amount of taxation contained this proviso: "*Provided*, That this section shall not go into effect or be binding on the company until the said company, by an instrument duly executed under its corporate seal and filed in the office of secretary of state, shall have signified its assent thereto, which assent shall be signified within sixty days after the passage of this act, or this act shall be void."

Chief Justice Miller in delivering the opinion in that case, said: "The main question here is, 'Did the legislature intend to make such a contract?' *and held* that its meaning and its terms are clear enough, and, taken alone, no one denies but that it is a contract which would be protected by the Constitution of the United States," and in like manner will the contract in question be upheld, and as said by Mr. Justice Miller in New Jersey *vs.* Yard, "The legislature was not willing to rest this contract in the usual statutory power alone, depending on its validity as a contract upon some action of the corporation under it, to bind it to its terms, but they required of the company a formal written acceptance within sixty days, else it became wholly inoperative." And it may be said in the New Jersey case there was no consideration other than is found in ordinary railroad charters. It is said, however, in that case the repealing clause, or what is known in this State as the act of 1856, was appended to the original charter, and when amended it formed no part of the amendment, as is found in this case, and therefore the court concluded the amendment was not subject to repeal.

The question is asked, "Why the necessity of making the act of 1856 apply to article 5, if the legislature did not intend to reserve the right of annulling the contract?" In response to this it might be asked, if such was the legislative intent, why the necessity of having a formal written acceptance from the banks surrendering all their respective charter rights, and in consideration therefor agreeing to tax them seventy-five cents on the hundred dollars, so long as their charters continued, if the power was reserved of abrogating the contract at any moment? If such was the legislative purpose there could have been no necessity for any consideration moving from the banks, or any formality attending the execution of the contract. The act of 1856 was enacted to avoid the effect of the
114 decision of the Supreme Court in the Dartmouth College case, reported in 4th Wheaton, to enable the sovereign power to amend and repeal charter provisions, that had theretofore been regarded as beyond the power of the legislature without such a reser-

vation, but under this act of 1856 it has been held by this court, as well as every other court having the question before it, that property rights or contract rights, acquired by virtue of the charter in exercising the privileges conferred, could not be interfered with by legislation, and in fact the act expressly provides, "that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." The old banks had contract rights sustained by the adjudication of the courts of the State that exempted them from local taxation, and the same adjudication was had in regard to national banks, although the cases as to the national banks were decided subsequent to the passage of the Hewitt bill. City National Bank of Paducah *vs.* The City of Paducah, 10th Kentucky Law Reporter; Covington City National Bank *vs.* The City of Covington, 21st Federal Reporter.

The legislature saw the obstacle in the way of increasing the taxation on these banks, and the national banks standing on the same footing with State banks, it became apparent that it was to the interest of the State to hold out inducements to all the banks, that equality as between them might exist, and at the same time increase the taxation. The banks had not asked for any amendments to their charters, nor was the effort made by the legislature to repeal, or amend the charters. The State was attempting to enact a general law entitled *revenue and taxation*, applying to all subjects of taxation and to all kinds of property. The tax in regard to banks under this general title was fixed at seventy-five cents as to all banks, and *to all corporations* required by law to be taxed on their capital stock, and as to the old banks and the national banks, the surrender of their rights was made to depend upon their acceptance of the proposition made to them by the State, by the terms of which they were to pay the tax imposed by the Hewitt bill and be released from other taxation so long as their charters continue.

Why, then, did the legislature annex to *article 2* of the revenue bill the provisions of the act of 1856. No contract had been made when the bill passed, as there had been no acceptance by the banks, and not until the adjournment of the legislature was the contract consummated. It was provided in article 2, that the acceptance had to be made before the legislature again assembled, and the act of 1856 could only have authorized a reservation of power, to repeal or withdraw this proposition, if within the period fixed there was no acceptance by any of the banks of its provisions.

The right to the franchise or the exercise of the privilege granted was not involved in the legislation, but the banks with their
115 charters in full force, were asked by the legislature to make an agreement as to a rate of taxation that could not have otherwise been imposed against either the old banks or the national banks. The corporations had the right to contract by reason of their charters, and dealing at arm's length with the State accepted the terms and conditions offered in good faith, and the question here is, not the right of the State to repeal or amend these charters, but the right of the State to cancel this contract without the consent of the banks. The right of the State to repeal the franchise or

amend the charter is not here questioned when subject to the act of 1856, but the repudiation of a contract will not be sanctioned.

There was, in fact, necessity for the State to apply the act of 1856 to article 2. Other corporations, as well as banks, organized since 1856, were liable to this tax whether they accepted the provisions of the Hewitt bill or not, and section 4 was inserted for the express purpose of creating a contract between the old banks and the national banks on the one side and the State on the other, by which the taxation on these banks might be increased, and at the same time placing all the banks accepting its terms on the same footing. If no acceptance had been made there was no reason why the act could not have been enforced, as against those corporations coming within the act of 1856; but neither the banks or the State ever intended to perform such an idle act as entering into this solemn agreement that might be disregarded by the State whenever its representatives saw proper.

The rule is, if a statute is susceptible of two constructions, that which is consistent with public policy will be followed, and no meaning given a statute that will lead to an absurdity.

The case before us is much stronger for the banks than that of Yard *vs.* the State of New Jersey. Here the old banks had contract rights sustained by the adjudications of the courts of the State to the effect that they were not liable to local taxation, and the same adjudication followed with reference to national banks. The contract was not only executed, but based on a valuable consideration. If there was any doubt as to its meaning, that doubt would be construed for the State; but when considering the entire article the intention of the Legislature, it seems to us, is manifest. This increased tax under the former constitution, as before stated, went to the State and not to the municipalities. Such was the policy of the State when the contract was made, and we perceive no reason for abrogating its terms so as to withdraw from the State treasury this additional tax the banks have been paying annuity to $125,000 annually, and transfer it to the cities to aid in discharging local burdens.

It requires no judicial utterance to show that under the national banking act, where the rate of interest is fixed at six per cent. (or as the State law provides) and a forfeiture of the entire interest if more is charged, that these banks by the imposition of local burdens, cannot be taxed as much as as two and one-half per cent. in
116 any locality when the average taxation of State banks will not exceed half that sum.

In the case of Lionberger *vs.* Rouse, reported in 105 U. S., after the national banking system went into effect, the legislature of Missouri passed a law asking the banks of issue in that State, ten in number, to enter into the new system. Eight of those banks became national banks, and two of them declined to do so. The two old banks, as the Supreme Court of the United States held in that case, had a contract right with the State not to be taxed exceeding one per cent. and the State was powerless to increase this tax. The assessment of the plaintiff's share of stock in the national

bank was at the rate of nearly two per cent. It was contended that this was an unjust discrimination in favor of the two State banks, and the Supreme Court said as this national bank or its shares was not taxed for a greater sum than other moneyed institutions of the State, and the State was powerless to change its contract with the two remaining banks of issue, it was not such a discrimination as would authorize the court to interfere. While there are exceeding *sixty* State banks, the Bank of Kentucky and its branches, the Northern bank and its branches, the Bank of Louisville, and the Farmers' Bank of Kentucky and its branches, were at the time of the passage of the Hewitt bill, and are now, regarded as the prominent banking institutions of the State, and if with their capital and business rank placed before the Supreme Court with a tax of only one per cent. and the tax on the national banks placed at two per cent. the judgment of the Supreme Court upon such a state of fact doubtless would have been similar to the decision of this court in the case of The National Bank against The City of Paducah.

The case of Lionberger *vs.* Rouse has no bearing on this question of contract. Here, the State was not powerless to remedy the evil or prevent the discrimination complained of in the Missouri case. The legislature devised a mode by which this discrimination could be removed, however great, or even insignificant the difference in taxation might have been. The national banks recognizing the fact they could be taxed as other moneyed capital, and desiring uniformity of taxation, and not one rate for one bank and a different rate for another, surrendered their right or claim to be taxed as the old banks, were taxed, and entered into this agreement by which a uniform system of taxation was adopted for all banks, such as the State desired.

The claim of the old banks and the national banks as to the mode of taxing them was certainly not without foundation, for the reasons already given; and the proposition by the legislature to settle these differences, and its acceptance, was a wise and just solution of the whole question.

The case presented by this legislative repeal is the opposite of the legislation in the Missouri bank case. In the one case there was no legislation making the discrimination, while in the case
117 before us, the State, after placing the banks, State and national, on the same footing as to taxation, by the consent and agreement of all the parties to the contract, is now insisting upon a legislative rescission of the contract, and placing the old banks at least in a position where they are to pay only fifty cents on the shares of one hundred dollars, and leaving the national banks subject to a greater rate of taxation.

This repeal, if sustained, is in effect the creation of three or more new banks with a rate of taxation much less than that imposed on the national banks, and making a discrimination in favor of the old banks and their branches that gives them a monopoly of the banking business of the State.

The old banks with a capital of five millions, at the time the Hewitt bill passed, will be relegated to the condition they were in

when the contract was made, as was held by the Supreme Court in the case of Clark *vs.* The Water Company, reported in 143 U. S, and that is *an exemption* from local burdens with a tax of one-half of one per cent. to the State. The national banks with a capital of ten millions when the Hewitt bill was enacted, and now increased to twenty millions will also be exempt from local burdens, because the State in the exercise of power it now claims has abandoned the contract under which taxation was equal and uniform, and voluntarily made an unjust discrimination, when in its power to prevent it. Such consequences would be disastrous to both the State and the municipalities, the State losing the increased tax, and the municipalities (or the legislature for them) without power to impose on national banks local burdens.

The banks have all practically accepted the provisions of the Hewitt bill, and the legislature repealing or canceling the contract being in violation of both the State and Federal Constitutions, leaves the Hewitt bill as to the banks in full force and they must be taxed under its provisions until the contract terminates.

These moneyed institutions are now paying, including tax on surplus and realty, eighty cents, or about that sum, on each share of stock of one hundred dollars, while the citizen tax-payer is paying only 42½ cents, and at last it is a question whether this difference in the taxation is to be paid by the banks into the State treasury as under the old constitution, or to the municipalities under the new constitution. In the absence of this contract it would go to discharge local burdens, but with this contract in full force it must be paid as to the amount and manner as provided by the Hewitt bill of 1886 into the treasury of the State.

It results, therefore, that the judgments in the case- of The Louisville Railway Company *vs.* City of Louisville; Third National Bank *vs.* City of Louisville; Northern Bank of Kentucky *vs.* Bourbon County; Deposit Bank *vs.* Franklin County; Bank of Kentucky *vs.* Armstrong; Bank of Kentucky *vs.* City of Frankfort; Farmers' Bank *vs.* City of Frankfort; Same *vs.* Franklin County; Same *vs.* City of Henderson are reversed. And the judgments in the
118 cases of The City of Louisville *vs.* Bank of Kentucky; Commonwealth *vs.* State National Bank; Same *vs.* Frankfort National Bank; Same *vs.* Deposit Bank; Commonwealth *vs.* Bank of Kentucky; City of Covington *vs.* German National Bank; Same *vs.* First National Bank; Commonwealth *vs.* Farmers' Bank are each and all affirmed.

The following dissenting opinion was delivered at the same time through Judge Paynter, to wit:

Were this a case simply affecting the rights of two citizens of the State, I might content myself with dissenting without expressing my reason therefor, but involving as it does the sovereignty of the people, and denying to them, as I conceive it does, the right to have their will to assume the form of law on such a vital question as that of taxation and their right to demand and enforce equal and just taxation, I feel constrained to give my reasons for dissenting from the views expressed by the court.

The effect of the opinion of the court is to destroy a principle engrafted in the laws of this State nearly forty years ago—one so important that it was declared by the General Assembly to be in effect written in every act of incorporation granted by it. So important was the reservation of the right to amend or repeal all acts of incorporation that the General Assembly was unwilling to run the risk of inserting it in each act, but declared by general law that it should be understood to be written in all of them.

The opinion in effect denies the power of the people, through their organic law, to declare what are just principles of taxation, that the same rate of taxation shall be imposed on the property of corporations as on an individual, and the authority of the General Assembly to execute that constitutional mandate. I believe that corporate rights should be held as inviolate as those of the citizen; that each citizen should bear his full share of the common burden of taxation; all freemen, when they form a social compact, are equal and no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community "but in consideration of public services." I do not believe in the State passing laws impairing the obligation of its contracts with corporations or individuals when the contracts are made by virtue of the provisions of the constitution; nor do I believe in denying the right to the State to withdraw from a contract when in express terms the right to do so is reserved, as in such case it cannot be said to impair the obligation of the contract.

While I regard there is a vast difference between granting a corporate franchise authorizing the acquisition of property by donation or otherwise for the purpose of educating and spreading the gospel among the Indians and affording an opportunity to the youth of the land in the days of the early settlement of the country, to obtain an education, as was the purpose of the charter to Dartmouth college, and granting immunity from taxation to institutions operated solely for private gain, yet as the courts of the country
119 taking the principle enacted in the Dartmouth College case as authority therefor, have held that immunity from taxation granted in the act of incorporation, is a contract with the State, and is irrevocable, unless the right to do so is reserved in the act of incorporation or in a general act, which must be treated as part of the act of incorporation, in considering those cases, I shall accept that as the rule to govern in the determination of the questions involved. Indeed it is unnecessary to take any other view of the law in order to reach the conclusion which I have done in these cases.

However, I cannot forbear quoting what Justice Miller said in delivering the opinion of the court in New Jersey *vs.* Yard, 95 U. S., 114, to wit: "The writer of this opinion has always believed, and believes now, that one legislature of a State has no power to bargain away the right of any succeeding legislature to levy taxes in as full a measure as the constitution will permit. But, so long as the majority of this court adheres to the contrary doctrine he must,

when the question arises, join with the other judges in considering whether such a contract has been made."

I agree with Justice Miller that in the matter of taxation, one legislature of a State has no power to bargain — the right of a succeeding legislature to levy taxes in as full a measure as the constitution will permit.

Such a power could be exercised to such an extent as to almost destroy the Government, or to grievously burden one class of its citizens.

Instead of having the Dartmouth College case under consideration had Chief Justice Marshall a case coming from Kentucky wherein it was claimed the legislature had sought to impair the obligation of a contract it had made with one of the old banks, by passing a statute providing it should pay an amount of tax in addition to that specified in its charter, I cannot believe, in view of the constitutional provision prohibiting the granting of exclusive privileges except "in consideration of public services," he would have held that the bank had an irrevocable contract with the State.

From the Dartmouth College case to the present time (and the right was in that case recognized) the Supreme Court of the United States has uniformly held that whenever the legislature granting the charter reserved the right to amend or repeal it, either by so providing in the charter or by a general law, the right to amend or repeal such charter exists, and to do so is not impairing the obligation of a contract.

The charter being accepted with the full understanding that the right of repeal is part of the contract, and to the exercise of which right the grantee has consented.

Many of the States, after the Dartmouth College case, began to realize the importance of reserving the right to control corporate organizations which from time to time were being created, and to make sure that such power was being reserved, they passed general laws expressly reserving such power, which statutes became a part of every act of incorporation as fully as if written therein unless a different purpose was therein plainly expressed.

The legislature of this State, being fully aware of the importance of such action as would reserve the right to amend or repeal acts of incorporation, passed what is known as the statute of 1856, which is section 8, chapter 68, General Statutes.

It reads as follows: "All charters and grants of or to corporations or amendments thereof enacted or granted since the 14th of February, 1856, *and all other statutes*, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, That whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

It seems so plain that charters and grants since the 14th day of February, 1856, are subject to amendment or repeal at the will of the legislature unless a contrary intent is plainly expressed therein that it is needless to discuss it.

The Supreme Court of the United States has not only so held, but this court has done likewise in every case that has been before it. Acts of the character of the act of 1856 have uniformly been held to be a condition upon which every charter of a corporation subsequently granted was held, and upon which every amendment or modification was made, and that they were as much a part of the charter as if incorporated into them. Any other interpretation would render the statute inoperative and wholly deprive it of its power to accomplish the purpose of its enactment. In 1841 South Carolina passed a statute substantially the same as the statute of 1856. The Northeastern Railroad Company was incorporated in 1851. In 1855 an act was passed to amend its charter, the amendment exempting the railroad company from taxation. In 1868 the State adopted a new constitution, in which it was declared that the property of the corporations then existing or thereafter created should be taxed.

The legislature of the State passed an act to enforce that provision of the constitution.

The question involved in Tomlinson *vs.* Jessup, 15 Wallace, 454, was as to the enforcement of such legislation. Justice Field, in delivering the opinion of the court in the case, said: "It is true that the charter of the company when accepted by the corporators constituted a contract between them and the State, and that the amendment, when accepted, formed a part of the contract from that date and was of the same obligatory character. And it may be equally true, as stated by counsel, that the exemption from taxation added greatly to the value of the stock of the company and induced the plaintiff to purchase the shares held by him. But these considerations cannot be allowed any weight in determining the
121 validity of the subsequent taxation. The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders, took their interests with knowledge of the existence of this power, and of the probability of its exercise at any time in the discretion of the legislature. The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contracts with corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation. There is no subject over which it is of greater moment for the State to preserve its power than that of taxation. Immunity from taxation, constituting in these cases a part of the contract with the Government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the legislature may deem it expedient for the public interests that the revocation shall be made.

The reservation effects the entire relation between the State and

the corporations and places under legislative control all rights, privileges and immunities derived by its charter directly from the State.

The same doctrine is enunciated in Railroad *v.* Maine, 96 U. S., 499.

Railroad Co. *vs.* Georgia, 98 U. S., 359.
Hoge *vs.* Railroad Co., 99 U. S., 348.
Greenwood *vs.* Freight Co., 105 U. S., 13, 21.
Spring Valley Water Works Co. *vs.* Schottler, 110 U. S., 347, 352.
Clore *vs.* Greenwood Cemetery Co., 107 U. S., 466, 476.
Louisville Gas Co. *vs* Citizens' Gas Co., 115 U. S., 683, 696.
Gibbs *vs.* Consolidated Gas Co., 130 U. S., 369, 408.
Sioux City Street Railway *vs.* Sioux City, 138 U. S., 98, 108.

It must be conceded from the authorities cited the Supreme Court of the United States has repeatedly held that the legislatures of the States have the power when reserved in the charters or by general law to change or repeal acts granting corporate privileges or franchises. The decisions of this court are in accord with these opinions.

The case of Griffin *vs.* Kentucky Insurance Company, 3 Bush, 592, has been quoted with approval in the case of Louisville Water Co. *vs.* Clark, 143 U. S., 14, and in that case the court held that in all cases of charters or grants of corporate franchises where the intention of legislature was not "plainly expressed" not to exercise the power, reserved by the statute of 1856 to amend or repeal
122 at the will of the legislature such charters or grants must be read as if all the provisions of the act of 1856 were incorporated in them.

Judge Robertson in delivering the opinion in Griffin *vs.* Kentucky Insurance Co., 3 Bush, 595, said: "Then was the general reservation of power like a special reservation in the charter itself, a part of the contract: or was the contract made subject to it and the obligations defined or modified by it? We think so. And whatever might be thought of the policy of such legislation, or of the policy or justice of the repealing statute, over which the judiciary has no jurisdiction, our conclusion, as to the mere power of repeal is as we think, sustained by reason and abundant authority. All contracts, except such as are municipal, are made subject to law, and their obligation is defined by the *lex loci contractus*. Why should the contract in this case be excepted? Such exception would be unreasonable; and the authorities fortify the reason."

In the case of Cumberland and Ohio Railroad Co. *vs.* Barren County Court, 10 Bush, 604, in reference to the act of 1856, the court said: "The act was intended to preserve to the State control over all acts of nicer peroration thereafter passed." Experience had demonstrated the propriety of, if not the absolute necessity, for such a reservation of power, and it would be a manifest disregard of the clearly expressed will of the legislature for the courts to resort to technical rules of construction, or finely drawn legal implications, to escape the effect of the plain declaration that all charters of and

grants to corporations shall be subject to amendment and repeal "unless a contrary intent be plainly expressed."

I conclude that the legislature in 1886, when it passed the revenue bill, had the right to amend or repeal at will all charters and grants of or to corporations, or amendments thereof enacted or granted since the 14th of February, 1856, "unless a contrary intent was plainly expressed."

In view of decisions of the courts I also concede that as to the charter of banks granted prior to the 14th of February, 1856, unless the acts extending them reserved the right to amend or repeal their charter, any act of the legislature increasing their tax would be invalid as to such banks, unless in acts extending them the right to amend or repeal was reserved.

The national banks were subject to have the same tax imposed on their shares of stock as are imposed on State banks, doing business under charters granted since the 14th of February, 1856.

Their real estate is subject to taxation. Their shares of stock may be taxed at their *actual* value, but no greater rate of taxation shall be collected on them than is assessed upon the moneyed capital in the hands of individual citizens of the State.

In the case of The Covington City National Bank *vs.* City of Covington, &c., 21 Federal Reporter, 491, Justice Matthews,
123 discussing this subject, said: "When, therefore, a statute taxes the shares of a stockholder at their actual or market or full value, that necessarily includes such value beyond its par or nominal value, as is imparted to the stock by the fact that the bank has a surplus fund or undivided profits. The interest which Congress has left subject to taxation by the States under the limitations prescribed, and which is a distinct, independent interest in property held by the shareholder, like any other property that may belong to him, is that interest as defined in Van Allen *vs.* The Assessors, 3 Wall., 573, which "entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter in proportion to the number of its shares, and upon its dissolution or termination to his proportion of the property that may remain of the corporation after the payment of its debts." And (page 587) "it includes for taxation the whole interest of shareholder, such as would pass to the purchaser of the share on a transfer of his certificate. So, when a State law taxes shares of national bank stock, it taxes the same interest of the shareholder that he would transfer on a sale. The State may tax them at their actual or at their market value, or at any other rate of appraisement which does not violate the act of Congress."

To the same effect are the cases of People *vs.* Commissioners of Taxes, 94 U. S., 415.

Mercantile Bank *vs.* New York, 121 U. S., 138. In the latter case the court said (p. 155): "The main purpose, therefore, of Congress in fixing limits to State taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals, carrying on a similar business

and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

The legislature of Pennsylvania passed a statute taxing the shares in national banks on an assessed value thereof for *county, school, municipal and local purposes.* The supreme court in Hepburn *vs.* The School Directors, 23 Wallace, 480, held the statute valid. It has been decided that it is competent for the States to tax the shares of national bank stock, notwithstanding the capital of the bank was invested in bonds of the United States which were not subject to taxation. It is no discrimination against them, because they are required to pay a greater tax on their shares of stock, than is paid by banks, enjoying special privileges under their charters. Lionberger *vs.* Rouse, 9 Wallace, 468.

The court should endeavor to ascertain the legislative intent in the act of 1886, with reference to the taxation of banks, as all depends in this controversy upon what was that intent.

To aid in reaching a conclusion as to what the intent was it is well to recall some official facts within the knowledge of the members of the legislature.

124 The first of July, 1885, was the date of the last report of the capital stock of the banks in the State before the enactment of the revenue law of 1886.

From that it is learned that the capital stock of the 59 national banks amounted to	$9,708,900.00
The capital stock of the 65 State banks, doing business under charters granted subsequent to 1856, amounted to...	6,224,891.00
The capital stock of the four State banks, Farmers' Bank of Kentucky, Bank of Kentucky, Northern bank and the Bank of Louisville, incorporated prior to 1856, was.....	5,144,500.00
It will be seen from this statement that the capital stock of the national banks and of the State banks chartered since 1856, amounted in round numbers to.....	16,000,000.00
While the capital stock of banks whose charters antedate 1856, amounted to about.....	5,000,000.00

being less than one-third of that of the other banks named. It must be presumed that the legislature knew that the banks claiming irrevocable contracts to pay only 50 cents on each share of the capital stock, equal to one hundred dollars, paid less than one-third of the revenue coming from the banks under the then existing law.

It can hardly be said that the Farmers' Bank of Kentucky was in a condition to claim an irrevocable contract, because the act extending its charter, which became a law on March 10, 1876, expressly reserved the right to amend or repeal its charter and amendments thereto. It reads as follows: "That the charter of the Farmers' Bank of Kentucky, as amended, be extended for a period of twenty-five years from the termination of its charter as therein fixed: *Pro-*

vided, that said charter and amendments shall be subject to amendment or repeal by the General Assembly, either by general or special act, and *Provided further*, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested.

To simply quote the act extending the charter is a sufficient denial of and answer to the claim of an irrevocable contract.

This left but three banks in the State which could claim an irrevocable contract, and one hundred and twenty-five without any claim whatever to immunity against increased taxation.

The revenue act repealed several acts by particularly naming them and excluded certain other acts from the repealing clause, and declared all other acts general and special, and parts of acts inconsistent or not in conformity therewith were thereby repealed. The revenue law is now chapter 92, General Statutes. The only part of the act relating to the taxation of banks and other institutions of loan or discount is article 2, chapter 92, General Statutes.

125 Section 1 of the article relates to the amount of tax which the banks shall pay and designates the method of levying the tax.

Sec. 2 imposes certain duties on the cashier of the bank with reference to making a report to the auditor of public accounts.

Sec. 3 exempts banks having certain money invested in bonds or funds of the United States from taxation named in the section.

Sections 4, 5 and 6 of article 2 are as follows:

SEC. 4. "That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax; and agree to pay the same as herein provided, and waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatever, so long as said tax shall be paid during the corporate existence of such bank."

SEC. 5. "The said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly; *Provided*, they pay the tax provided in section 1 from the passage of this act."

SEC. 6. "*This act shall be subject to the provisions of section eight* (8) *chapter sixty eight* (68) *of the General Statutes.*"

Section 7 provides that if the banks fail or refuse to make the consent and agreement as provided in section 4, then they are to be assessed, and the same tax, State, county and municipal, shall be imposed, levied and collected, &c., as is imposed on the assessed taxable property in the hands of individuals.

Without section 4 the remaining sections of the article would

have been a complete system for levying and collecting taxes on the banks chartered after 1856. The article *treats of nothing except the taxation of banks.*

It seems there can be no further question of the power of the legislature at that time to impose a tax on such banks for State, county and municipal purposes. It was wholly useless for the legislature to ask the consent of the banks chartered since 1856 to make any consent to the imposition of tax on them for that purpose. The national banks were subject to the payment of taxes for State, county and municipal purposes, and it was not necessary to obtain their consent that they might be taxed for that purpose.

It was needless to ask this class of banks to enter into the agreement.

The legislature may have entertained some doubt not as to the right to tax national banks for State, county and municipal
126 purposes, but as to the method prescribed and desired to remove all doubt by obtaining the consent of such banks to that method.

It was greatly to the interest of the national banks and the State banks chartered subsequent to 1856 to enter into the agreement because they were thus released from the payment of county and municipal taxes. In agreeing to pay the amount provided in the article for State purposes they were released from local burdens which in some instances were two or three times as great as that which they agreed to pay the State.

It was greatly to their interest to accept the proposition of the State.

As a matter of fact these banks were relinquishing no rights. They were apparently yielding a right which the State, in its sovereignty, already possessed. The right had never been relinquished, but had been expressly reserved. So vigilant had been the State to retain the control of corporations, and retain its power to tax them, its purpose to do so was declared in the form of a legislative enactment which was understood to be written in every act of incorporation.

It may be a more difficult task to show why the three old banks entered into the agreement. Their right to the immunity from increased taxation was questioned, as shown by the revenue act, as their charters were declared repealed so far as they were inconsistent therewith.

It was the evident purpose of the legislature to induce these banks to recede from their claim to an irrevocable contract. It was desired that all banks should be placed upon the same footing in the matter of taxation with the other banks of the State. The legislature had been renewing their charters, and if they were again renewed an appeal must be made to the same power. These banks may have realized that the act of 1856 should have by a proper interpretation been made applicable to the acts renewing their charters. However, it is needless to speculate further as to the reasons which induced them to enter into the contract with the State by which they released any irrevocable contract which they had under

their charter against increased taxation. These banks had the right to give their consent to the increased taxation.

The courts have always recognized the right of a corporation to consent to legislation or accept its provisions, and be bound thereby, though it may have the effect of depriving such corporation of a vested right.

This brings me to the question as to what were the terms and conditions of the contract into which all these banks entered.

The banks must be presumed to know the law and the effect of the contract to which they agreed.

Those who represent banks are among the brightest and most sagacious business men of the country.

The contract is brief, simple and without ambiguity.

127 In short, the State agreed to accept and the banks agreed to pay seventy-five cents annually on each share of their stock equal to one hundred dollars, and in consideration thereof, to be exempt from all other taxation whatsoever so long as the tax shall be paid during the corporate existence of such bank. If these were all the terms of the contract then it might be contended with some reason that it was irrevocable during their corporate existence.

Being mindful of the policy which had been pursued for thirty years, it said in effect to the banks, it is desired that the contract be signed in the formal way prescribed, but it must be understood that the right to alter, change or abandon the contract is reserved to the State. That its purpose might be fully understood the legislature placed in the article section 6, which in terms makes the statute of 1856 a part of the contract. It is expressly provided that the article shall be subject to the provisions of section 8, chapter 68, General Statutes.

The legislature was determined that the provisions of the act of 1856 should not depend on rules of construction to be read into the contract by implication, but in terms said that it should be a part thereof. It is admitted that when the word "act" appears in article 2 it has reference to the article (2).

Article 2 was an independent measure, offered as a substitute to article 2 of the original bill. The substitute was adopted and became a part of the revenue bill. It now appears as a part of the bill in the exact language as offered.

Section 6 has no reference to any part of the revenue bill *except the article of which it is a part.* It has been suggested that it had reference to new banks that might be organized.

This could not be so, because article 2 is dealing with banks in existence, and asks them to give their consent, &c., thereto, and says, if at all, they must do so before meeting of the next General Assembly. When it was admitted that the word "act," as used, is synonymous with "article," then it must be admitted that the provisions of section 6 of article 2 are applicable alone to the article (2), of which it is a part.

If there could be any doubt from the language used as to the

meaning of the legislature, then that must be removed by an examination of the house and senate journals.

An amendment (p. 1241, House Journal, 1886) was offered to article 2 of the original revenue bill and section 7 of that amendment reads as follows: "This act shall *not* be subject to the provisions of section 8, chapter 68 of the General Statutes."

The amendment (p. 1243, House Journal, 1886) was defeated.

While the revenue bill was pending in the Senate it was proposed to amend section 6 of article 2 by inserting after the word "shall" in the first line the words "*not for ten years*," (p. 1315, Senate Journal, 1886). This amendment was defeated. Had it been adopted, then the section would have read: "This act shall *not for ten years* be subject to the provisions of section eight (8), chapter sixty-eight (68), of the General Statutes."

128 The proceedings of the house and senate show the members of the legislature fully understood the purpose for which this section was made part of article 2. It was the purpose of the legislature not to be restricted for any period of time in its right to repeal the article and withdraw from the contract.

In view of the plain provisions of the statute, about the meaning of which there should be no doubt, and the intent of the legislature being fully explained by its records, it seems to me there should be no hesitation in concluding the act of 1856 should be read as a part of the contracts, hence they are not irrevocable.

The fact that a written consent was asked and received does not alter the application of the act of 1856.

To this effect is New Jersey *vs.* Yard, 95 U. S., 104.

The facts of that case were as follows: The Morris & Essex Railroad Company was created a corporation by an act of the legislature of New Jersey passed January 29, 1835. The act provided that as soon as the net proceeds of the railroad amounted to seven per cent. on its costs, it should pay a State tax of one-half of one per cent. on the cost of the road, and no other tax should be levied upon it.

The twentieth section reserved to the legislature the right to amend or repeal the act, whenever it should think proper. A supplemental act was passed on March 2, 1836, in which the right to repeal or amend was reserved.

On the 14th of February, 1846, the legislature of New Jersey passed an act in effect the same as the Kentucky act of 1856.

Another supplemental act to the charter of the railroad was approved March 23, 1865, authorizing a branch road to be built, and by which the company was vested with all the powers and franchises given by original and supplemental acts, &c.

The third section of the last-named act reads as follows: "Be it enacted, that the tax of one-half of one per cent. provided by their said original act of incorporation, to be paid by the said company to the State whenever the net earnings of the said company amount to seven per cent. upon the cost of the road, shall be paid at the expiration of one year from the time when the road of the said company shall be open and in use to Phillipsburg, and annu-

ally thereafter, which tax shall be in lieu and satisfaction of all other taxation or imposition whatever, by or under the authority of this State, or any law thereof: *Provided*, That this section shall not go into effect or be binding upon the said company until the said company, by an instrument duly executed under its corporate seal and filed in the office of the secretary of state, shall have signified its assent thereto, and which amount shall be signified within sixty days after the passage of the act, or this act is void." The instrument required by the section was duly executed by the company.

In the act of 1865 there was no reservation of the right to repeal or amend it.

129 Acts of the legislature imposed a more burdensome tax on the railroad company than that provided for in section three, *supra.*

The sole question in New Jersey *vs.* Yard was whether the act of 1865 and its acceptance by the railroad company constituted a contract which could not be impaired by any subsequent legislation of the State.

The court held that it was an irrevocable contract *because the legislature had not reserved the right to amend or change it.*

It is plain from the opinion that had the legislature reserved the right to alter or change the contract or act by which it was made, the court would have held the act of the legislature doing so did not impair the obligation of the contract. Justice Miller, in delivering the opinion, said: "But as we have already said, since the legislature which passed the act of 1865 had the power to make a contract which *should not be subject to repeal* or *modification* by one of the parties to it without the consent of the other, the main question here is, *Did they intend to make such a contract?*"

* * * * * * *

"In the case now under consideration, it is conceded on all hands that the act of 1865 was a contract for a tax of one-half of one per cent. per annum on the cost of the Morris & Essex railroad, and no more. But counsel for defendant says the contract was repealable; that the legislature of its own volition could impose other and more burdensome taxes at its discretion; that it was a contract so long as the legislature of New Jersey was satisfied with it, and no longer.

"It is conceded, also, that this construction of it cannot be sustained, unless we are bound to import into it either the reservation clause of the act of 1836, or what is called the interpretation act of 1846. We have already shown how little reason there is for doing this, on general principles of construction. We think it still clear that it cannot be done, because it is inconsistent with the legislative intent in passing the act of 1865."

* * * * * * *

"The implication is of a right to revoke it, and comes from the other quarter, and is one which *we do not think exists by fair con-*

struction, and which we do not feel at liberty to import into the contract, to defeat its manifest purpose."

From the language of this opinion and the long line of decisions of the same court, it is manifest that the decision was made to turn on the question of the reservation of the right to amend or repeal, &c.

In order to hold that the right to alter, &c., the contract made under article 2 does not exist, it is absolutely necessary to eliminate section 6 from the article. No such a rule for the interpretation of statutes can be found, as the meaning of the section is manifest and clear.

130 Besides, by the very terms of the act of 1856 a rule of interpretation is given that "all charters and grants of or to corporations or amendments thereof *and all other statutes,*" shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein "plainly expressed."

It is proposed now by those representing the banks to disregard this statutory rule of construction. It is now in effect insisted that in order to reserve the right claimed it must be "plainly expressed" in the act that it is reserved. This being done it is still disregarded.

The legislature doubtless anticipating such contention and versatility, "plainly expressed" in the article, that whatever was done thereunder or in pursuance thereof could only continue during its will. If section 6 was not for this purpose, I should like to have had the court to suggest some reason as to why it was placed in the article.

The doctrine is that when it is asserted that a State has bargained away her right of taxation in a given cause, the contract must be clear and cannot be made out by dubious implication.

New Jersey *vs.* Yard, *supra.*

The taxing power of the State is never presumed to be relinquished unless the intention to relinquish is expressed in clear and unambiguous terms.

Bradley *vs.* McAtee, 7 Bush, 667.

It is a familiar rule of construction of statutes that effect must be given to every provision except in cases of absolute and irreconcilable incongruity.

Dazley *vs.* Killan, 2 Duvall, 407.

If one statute refers to another for the power given by the former, the statute referred to is to be considered incorporated in the one making the reference.

Nunes *vs.* Wellisch, 12 Bush, 365.

Mr. Cooley in his work on taxation (p. 204) says: "As taxation is the rule, and exemption the exception, the intention to make an exception ought to be expressed in clear and unambiguous terms; and it cannot be taken to have been intended when the

language of the statute on which it depends is doubtful or uncertain."

For the interpretation of statutes this court in Nichols *vs.* Wells, Sneed, 259, said "that the most natural and genuine way of construing a statute is to construe one part by another part of the same statute; that the words and meaning of one part of a statute do frequently lead to the sense of another; and if it can be prevented no *clause* or *sentence* or *word* shall be superfluous, void or insignificant."

As there is a clear expression of the legislative intent in the statute, no rules are really necessary to aid in its interpretation.

If A should rent B his farm for a term of 99 years in consideration of a certain annual rental, but it was written in the
131 contract that it was "subject" to be annulled at the will of A, in the interpretation of this contract would not a court hold that the entire instrument was to be considered in determining its effect? Would not A's right to annul the contract be just as enforceable as B's right was to enter upon the farm under the contract? Whilst it might be said it was an unwise contract on the part of B, yet being capable of contracting he would be bound thereby, and a court would certainly not hold, because it appeared to be an unwise contract for B to have entered into, that therefore A did not reserve the right to annul the contract. This is the character of interpretation which must be employed to sustain the contention of counsel for the old banks. It can hardly be said it was an unwise contract on the part of one hundred and twenty-five of the one hundred and twenty-eight in the State, as by the very terms of the act under which the contract was entered into they were required to pay State, county and municipal taxes, with the power in the legislature to increase it at will.

It certainly was a very advantageous contract for them to enter into. When these banks paid more than two-thirds of the taxes paid by all banks, with the power in the legislature to increase the amount if they should so desire, what reason can be suggested as to why the legislature would desire to reverse the policy which had been steadfastly adhered to for so long, and enter into an irrevocable contract with such banks?

Why should it want to surrender a power which it had been so jealous to preserve?

The contract was made subject to the right of the legislature to withdraw from it whenever it regarded the public interests demanded it should do so.

Whenever the banks accepted the provisions of the act of 1886 they surrendered any rights to immunity from increased taxation which their charters gave them.

The acceptance of the act of 1886 was a consent to the repeal of so much of their charters as *were* inconsistent therewith, hence they stood in such relation to the State as to future taxation as the legislature saw proper to impose. If the provisions of their charters relating to taxation were repealed, as it must be admitted they were by the act of 1886, then such powers were no longer in force. It is

unreasonable to say that the provisions of the charters fixing the rate of taxation in banks at fifty cents on each share of the capital stock of the banks equal to one hundred dollars can be in force if the act of 1886 fixing such tax at seventy-five cents instead of fifty on shares is in force. The court admits the latter is in force. In doing this it must be admitted the charter privilege has been repealed.

If repealed, then, by the act of 1886, surely the only way in which the provisions of their charters could be restored would be by the legislature so providing in some act.

132 There is no pretence this has been done. The fact that the law of 1886 has been repealed does not restore the former provisions of their charters. Section 464, Kentucky Statutes, provides, "When a law which may have repealed another, shall be repealed, the previous law shall not be *revived*, unless the law repealing it be passed during the same session of the General Assembly."

It is a most groundless contention to say that if the present law is sustained that the old banks will be restored to the former privileges under their charters.

It has been suggested that the provisions of their charters with reference to taxation were vested rights, and although they "consented to the legislation of 1886, and because subject to the provisions of the act of 1856, still, as the charter privilege as to taxation was a vested right, therefore it was saved to them by the proviso which preserves other rights previously vested."

The purpose of the act of 1856 was to reserve in the legislature the power to destroy the privileges and franchises granted in the charters.

If it does not have this effect, it would be entirely inoperative, and the effort to retain control of corporations would be a bother. The claim that the privileges granted by article 2 can be repealed, but without the right to terminate the contract with the banks, is not founded in reason.

The only privilege which the banks enjoyed was to pay the 75 cents on each share of stock in lieu of all other taxes.

To say that the law granting the privilege can be upheld because the right to do so was reserved, as is admitted by the court, and still leave the banks in its enjoyment (*as is the effect of the opinion of the court*) is to employ logic that has never been in common use by this or any other court. This logic gives the banks the substance and the State the shadow. The preserved rights, then, are not privileges and franchises granted by the repealed charter, but "other rights" which had vested previous to the act amending or repealing the charter.

The other rights are such as the beneficiaries under the charter may have acquired in property, choses in action, real and personal property or interests of every character which they could acquire in operating under the charter, and also such rights or interests as other persons may have previously acquired by contract, mortgage, judgment, or otherwise in the property belonging to the corporation.

My contention has been recognized as correct in all the decisions

of this court in passing upon the act of 1856. The Supreme Court of the United States has so construed the act. It was said in Griffin *vs.* Kentucky Insurance Company, 3 Bush, 594, "The proviso was intended to secure the rights of beneficiaries and others vested under the charter before its amendment or repeal, and does not affect the mere power to repeal the franchise."

133 To same effect is Cumberland & Ohio Railroad Company *vs.* Barren County Court, 10 Bush, 609. Section 174 of the constitution recognizes a just principle when it declared that all property, whether owned by persons or corporations, should be taxed in proportion to its value unless exempted thereby, and that all corporate property should pay the same rate of taxation paid by individual property.

The legislature, in obedience to that provision of the constitution, enacted the law for levying and collecting tax from the banks of the State, the validity of which is in question in these cases.

For the reason already given, I conclude that the obligation of no contracts *were* impaired by the action of the constitutional convention or the succeeding legislature. Some of the best lawyers in the State were members of the convention which framed our constitution, who gave an earnest consideration to the questions involved in these cases, and the conclusions which they reached were crystal-ized into section 174 of the constitution.

I believe that their conclusions are correct.

The opinion of the court denies the power is in the legislature to say what taxes the banks of the State shall pay for State purposes during the existence of their several charters. It denies the right of the legislature to compel them to bear any of the burdens of county and municipal governments.

I cannot believe the legislature did or intended by article 2 of the act of 1886 to reverse its policy so earnestly pursued for a generation and surrender to sixty-odd banks of the State its right previously reserved to control them in the matter of taxation, and to give up its power to increase or diminish the taxes imposed on one hundred and twenty-five banks, this including the national banks.

Exigencies may arise requiring the levying and collecting of vast sums to meet the public demand; yet, however great the emergency may be, or imperative its demand for money to meet such wants, the legislature is powerless to compel the banks to contribute more than they are now paying at any time during their corporate existence.

The counties and municipalities are annually compelled to raise large sums of money by taxation. The counties of the State are compelled to incur large expense to support the county governments, to pay for bridges and public highways, and to support their unfortunate citizens. The municipalities must incur great expense in making all necessary improvements for the comfort, safety and health of their citizens, to supply water and lights and to give police protection to their citizens and to the banks; yet, the court concludes that the legislature has no power to compel the banks to

contribute their fair share of such expenses. In this view I cannot concur.

Judges Lewis and Guffy concur in this dissenting opinion.

134 COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 93 pages contain a true, full and complete transcript of the record and proceedings had in said court in the case wherein The Farmers' Bank of Kentucky is appellant and The Board of Councilmen of the City of Frankfort, &c., are appellees, except the opinions of the court which are copied in the record in case of Farmers' Bank of Kentucky *vs.* The Board of Councilmen of the City of Frankfort, and except the proceedings upon and the petition for rehearing as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 11th day of May, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

[SEAL.]

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Exhibit "G" reads as follows:

Franklin Court Circuit, January 21, 1896.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, etc., Defendants. } Judgment.

This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed reversing the former judgment of this court, and the court being sufficiently advised, it is adjudged that article 2 of the act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, (General Stat's, chapter 92, article 2,) and the acceptance of the provisions thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provision of the present constitution of this State and of the act of November 11, 1892, (act 3, chapter 103, Acts 1891-'2-'3,) in so far as they were intended to provide for any assessment or taxation of, for county and municipal purposes, its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution, and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be and the same is now hereby made perpetual, and the defendant be, and each of them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the purpose of collecting any taxes for the county of Franklin upon the franchise or property of the plaintiff, except taxes on its real estate used in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

135

STATE OF KENTUCKY,
County of Franklin, } *sct:*

I, Thos. B. Ford, clerk of the Franklin circuit court, certify that the foregoing is a true copy of the judgment in the above-styled action.

Witness my hand as clerk of said court this May 7, 1897.

THOS. B. FORD,
Clerk Franklin Circuit Court.
[SEAL] By J. R. ELLIOT, *D. C.*

Exhibit H reads as follows:

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the first day of June,
136 1895, Chief Justice W. S. Pryor, judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin sitting:

THE FARMERS' BANK OF KENTUCKY, Appellant,
versus
THE CITY OF HENDERSON and P. R. YEANEY, Collector of Taxes, Appellees.

Be it remembered that heretofore, to wit: on the 4th day of October, A. D. 1894, the appellant, by its counsel, filed in the clerk's office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

STATE OF KENTUCKY:

Henderson Circuit Court.

Pleas before Hon. M. C. Givens, judge of the Henderson circuit court, at the court-house, in the city of Henderson, Ky., on Friday, Nov. 3, 1893.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE CITY OF HENDERSON and P. R. YEANEY, Collector of Taxes, Defendants. } Petition in Equity.

Be it remembered that on Nov. 4th, 1893, the plaintiff filed its schedule in the clerk's office of the Henderson circuit court, which is in words and figures as follows:

Henderson Circuit Court.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
versus
THE CITY OF HENDERSON ET AL., Defendants. } Schedule.

For the purposes of an appeal to the court of appeals of Kentucky, from the judgment of the Henderson circuit court in the above action the clerk of the Henderson circuit court is directed to copy the entire record, including the pleadings and all orders in said action.

MONTGOMERY MERITT,
A. T. DUDLEY,
Attorneys for Plaintiff.

The defendants hereby accept service of the notice of the filing of the above schedule in the office of the clerk of the Henderson circuit court on this 4th day of November, 1893.

J. L. DORSEY,
Attorney for Defendants.

137 At a September term, 1893, of the Henderson circuit court, to wit: Monday, October 9, 1893, the following order was entered herein:

"The plaintiff filed its petition and on its motion the same is now ordered docketed, and moved the court to grant the injunction prayed for in the petition. The defendants by attorney entered their appearance and waived notice. Said motion was for the time continued."

The petition referred to in the foregoing order is here copied as follows:

"The plaintiff, The Farmers' Bank of Kentucky, states that it is a banking corporation, duly chartered by an act of the General Assembly of the Commonwealth of Kentucky by an act, entitled An act, to incorporate the Farmers' Bank of Kentucky, approved February 16, 1850, and under its charter, which would have expired in 1880, by the terms thereof, but for the act extending it hereinafter mentioned, is possessed of general banking powers among them those of having and conducting offices of loan and discount, to loan money, discount promissory notes and bills of exchange, and deal in exchange, and soon after the granting of its said charter it organized thereunder, and has conducted its banking business ever since such organization under said charter and under the act hereinafter mentioned, by which the term of such charter was extended. At this time the principal officer is located at the city of Frankfort, Ky., and its branches respectively in the city of Georgetown, Ky., and in the city of Henderson, Ky. That section fifteen (15) of the act first mentioned prescribes that "it shall be the duty of the cashier of the principal bank on the first day of July, 1851, and on the first day of July in each succeeding year during the continuance of this charter to pay into the treasury of this Commonwealth fifty cents on each one hundred dollars of stock held and paid for by said bank, which shall be in full of all tax or bonus, provided that no tax shall be paid until said bank goes into operation, and provided further that the tax or bonus hereby proposed to be imposed upon such shares of stock in this bank, or such as shall hereafter be imposed on each share is set apart, and forever dedicated to the cause of education on the common-school system, and whenever the same or any part thereof shall be directed otherwise by legislative enactment said bank shall be exonerated from the payment of any tax or bonus whatever."

Plaintiff says that said contract and stipulation as contained in the said charter, fixing the said rate of taxation conduced to the acceptance of the said charter, and to an organization under it by said bank, and to the maintenance of said bank and its branch banks, that by an act entitled An act extending the charter of the

Farmers' Bank of Kentucky, approved March 10, 1876, the said legislature extended the aforesaid charter for the period of
138 twenty-five years from the time of the expiration of its said original charter in language as follows:

SECTION 1. That the charter of the Farmers' Bank of Kentucky as amended by extended for the period of twenty-five years from the termination of its charter as therein fixed—*Provided*, that said charter and amendments shall be subject to amendment or repeal by the General Assembly, either by general or special act, and provided further, that whilst the privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair the rights previously vested. Said act is contained in the Acts of 1876, volume 1, page 324.

Plaintiff states that in pursuance *to* said provision relating to tax, the plaintiff, from the time of its first organization, and ever since then to the date hereinafter mentioned, has always paid and continued to pay to the State of Kentucky said tax on each hundred dollars of the stock issued and paid for in the said bank. That by a general statute passed by the said legislature, and approved on May 17, 1886, chapter 92 of the General Statutes of Kentucky, article 2, section 4, commonly called the "Hewitt law," it was provided that each of said banks, (viz: State and national banks) by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof: may give its consent to the levying of a tax of seventy-five (75) cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations or societies, and that such corporations shall pay, in addition, upon each one hundred dollars, or so much of their surplus, undivided surplus, undivided profits or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax. State, county and municipal, and agree to pay the same and to waive and release all right under the acts of Congress or, under the charters of the State banks, to a different mode or smaller rate of taxation, which consent or agreement shall be evidenced by writing under the seal of said bank and delivered to the governor of the Commonwealth of Kentucky, and said section further provides that upon such agreement and consent being delivered, and in consideration thereof, such bank, and its shares of stock, shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of said bank. Under the 7th section of the same article it is also provided that nothing in said act contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned and used by said banks or corporations, for conducting their business, but that the same may be taxed for county and municipal purposes as other real estate is taxed.

That in the 5th section thereof it is also provided that said banks may take the proceeding authorized by said 4th section of
139 such act, at any time until the meeting of the next General Assembly, provided they pay the tax aforemended.

Now, the plaintiff states that within the aforesaid time so fixed by said act for an acceptance of the proposition of the State of Kentucky, to wit: on the 6th day of December, in the year 1887, the said Farmers' Bank of Kentucky, by a majority in interest of a quorum of the stockholders of said bank, did consent and agree to and with the Commonwealth of Kentucky to the payment of the taxes proposed and provided for in aforesaid article 2, and in all other respects did comply with all the requirements of said act; and said bank thereupon did complete its acceptance of the proposed contract with the Commonwealth of Kentucky, and delivered its said written consent and agreement to the governor of the Commonwealth of Kentucky, as prescribed by the act, and have always complied with the provisions of said contract from the inception of plaintiff's liability thereunder, by paying to the said State of Kentucky the above taxes on all the shares of stock and all taxable surplus and profits in the ratio fixed by the act and contemplated by the said act and contract, and by paying all the county and municipal taxes assessed against its real estate owned and used by said bank and its branches in conducting its business until the — day of ——, 1893, when it tendered and offered to pay to said State all the taxes for which it was liable for the year (the same being the only remaining unpaid tax), and the State of Kentucky, by its auditor of public accounts, whose duty it was to receive same, refused to accept such payment. Plaintiff says and submits that under its said contract with said State of Kentucky it is not liable for the payment of any greater, or higher, or other rate of tax or taxes, State, county or municipal, than that fixed under its said contract, during the period of its existence as a corporation; and that its said contract with the State of Kentucky is in full force and is irrepealable during the said corporate existence of plaintiff, so long as said bank continues to observe the same; and also that under said agreement said bank and the shares of stock therein, and the property of the said bank, save and except its banking homes, are exempt from both county and municipal taxes.

It states the legislature of the State of Kentucky, by a late act which became a law on November 11, 1892, entitled "Revenue and taxation," chapter 103, enacted in article 1, section 2, that all real and personal estate within the State of Kentucky, and all personal estate of persons residing within such State, and all corporations organized under the laws of this State, whether the property be in or out of this State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to taxation, unless the same shall be exempt from taxation by the State constitution; and in the 3d section thereof, that the State of Kentucky, and each county, incorporated
140 city, town, and taxing district, shall have a lien on all other property of each person or corporation owing the same for the taxes due by them respectively. Plaintiff submits that if such act was intended by the said legislature of this State to apply to and include this plaintiff, or the shares of stock held therein, or its property, the same is in conflict with the aforesaid agreement made

between this plaintiff and the State of Kentucky, and as to the said plaintiff and said stock, the last-mentioned act is inoperative and void during the corporate existence of said bank; and it further submits that the said act of November 11, 1892, in so far as it conflicts with the aforementioned agreement, impairs the obligation of the said contract and is unconstitutional and void.

Plaintiff further alleges and submits that if it should be held by the court that the act of November 11, 1892, operated as a repeal or abrogation of the said "Hewitt" law of 1886, and as a repudiation by the said State of Kentucky of its said contract; then the original charter of the plaintiff is now in full force and effect; and that the plaintiff is restored to all its vested rights under its original charter, among which is its exemption from any greater or other tax than that specifically designated by its said charter. Plaintiff states that the defendant, City of Henderson (an incorporated city, within the State of Kentucky), without right and due legal authority, is seeking to subject the plaintiff to the payment of certain municipal taxes claimed by it as owing to said city from this plaintiff, and certain penalties sought to be by it imposed upon said bank for the non-payment of said tax; and that the defendant, P. R. Yeaney, is the collector of taxes for said city, and has demanded from plaintiff, by the direction of said city, or municipality, the sum of three thousand, nine hundred and forty-nine dollars ($3,949.00) for said taxes, and eighty dollars and seventy-four cents ($80.74) as a penalty or penalties for the non-payment of said taxes, which demands plaintiff has refused to comply with, and that said City of Henderson, through its collector of tax-, and said tax collector, have threatened, and do now threaten, to levy upon and sell the banking-house of said plaintiff for the satisfaction of said alleged taxes and penalties, and unless restrained by law they will proceed to carry out said threat; and if the injunction hereinafter prayed for be not immediately granted, great and irreparable injury will result to the plaintiff, and no injunction about the matters herein has been refused by the court or any circuit judge.

Wherefore plaintiff prays that the defendants be enjoined from collecting from the plaintiff the taxes and penalties above mentioned, and from levying upon and selling the banking-house and any other property of plaintiff for said taxes or penalties, and for all the relief to which it may be found entitled.

MONTGOMERY MERRITT,
A. T. DUDLEY,
Attorneys for Plaintiff.

141 A. T. Dudley, one of the attorneys for the plaintiff, says that the president and principal officer of the plaintiff, The Farmers' Bank of Kentucky, is Thomas Rodman, who is absent from Henderson county, Kentucky, and affiant says he believes the statements in the foregoing petition are true.

A. T. DUDLEY.

Sworn to before me by A. T. Dudley, — day of October, 1893.
MONTGOMERY MERRITT, W. *P., H. C.*

At a special November term of the Henderson circuit court, to wit: Friday, November 3rd, 1893, the following order was entered herein:

The defendants filed this demurrer to plaintiff's petition. This cause coming on to be heard upon defendants' demurrer to the plaintiff's petition, and the court being sufficiently advised, it is adjudged that the demurrer be sustained, and the plaintiff declining to plead further, it is adjudged that the injunction prayed for — and is now refused, and that the plaintiff's petition be dismissed absolutely, to which the plaintiff objects and excepts, and prays an appeal to the court of appeals, which is granted.

The demurrer referred to in the foregoing order is here copied as follows:

"The defendants demurrer to the petition of the plaintiff, and say that said petition does not state facts sufficient to constitute a cause of action."

CITY OF HENDERSON,
By J. L. DORSEY, *Attorney.*

STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, S. A. Young, clerk of the Henderson circuit court, same being a court of record in and for the county and State aforesaid, do certify that the foregoing 13 pages, this included, contains a full and complete transcript of all the record and proceedings in suit Farmers' Bank of Kentucky, plaintiff, *vs.* The City of Henderson, &c., defendants, as found of record in my office and directed to be copied per plaintiff's schedule incorporated herein, and made part of this transcript.

Given under my hand as clerk of said court this 10th day of November, 1893.

S. A. YOUNG, *C. H. C. C.*

Clerk's fee, $3.90.

142 Upon which transcript was endorsed the following statement:

Kentucky Court of Appeals.

FARMERS' BANK OF KENTUCKY, Appellant,
versus
THE CITY OF HENDERSON and P. R. YEANEY, Collector of Taxes, Appellees.

The judgment appealed from was rendered by the Henderson circuit court on November 3rd, 1893, and is on page 12 of the record. An appeal was granted by the court below.

MONTGOMERY MERRITT,
A. T. DUDLEY,
JNO. W. RODMAN,
Attorneys for Appellant.

Afterwards, at a court of appeals, begun and held for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 4th day of October, A. D. 1894, the following order was entered:

FARMERS' BANK OF KENTUCKY
vs.
THE CITY OF HENDERSON, &c. } Henderson.

Came the parties by counsel, and on their motion and by their consent, it is ordered that this cause be docketed.

The appellant moved the court to advance this case, together with the case of Farmers' Bank of Kentucky against Franklin County, and the case of Farmers' Bank of Kentucky against Board of Councilmen of the City of Frankfort, &c., and hear them with the case of Commonwealth, &c., *vs.* Farmers' Bank of Kentucky, which was continued for oral argument at the last term of this court, and the cause is submitted on the motion.

Afterwards, at a court of appeals, held as aforesaid, on October 23, 1894, the following order was entered:

FARMERS' BANK OF KENTUCKY
vs.
CITY OF FRANKFORT, &c. } Franklin.

SAME
vs.
FRANKLIN COUNTY, &c. } Franklin.

SAME
vs.
CITY OF HENDERSON. } Henderson.

The court being advised, it is ordered that these causes be advanced and set for hearing with the case of The Commonwealth, &c., *vs.* Farmers' Bank of Kentucky on the argument docket for the next term of this court.

Afterwards, at a court of appeals held as aforesaid, the following order was entered:

COMMONWEALTH, &c.,
vs.
FARMERS' BANK OF KENTUCKY. } Franklin.

FARMERS' BANK OF KENTUCKY
vs.
CITY OF FRANKFORT, &c. } Franklin.

SAME
vs.
FRANKLIN COUNTY, &c. } Franklin.

SAME
vs.
CITY OF HENDERSON. } Henderson.

143 By agreement of all the parties, and on their motion, it is ordered that these seventeen cases be heard together, and said

causes coming on to be heard were argued by A. P. Humphrey for *for* the banks, and Ira Julian for the Commonwealth, counties and cities, and laid over until tomorrow for further hearing.

Afterwards, on the 5th day of March, 1895, the following order was entered herein:

These causes again coming on to be heard, were argued by D. W. Lindsey for the banks and W. McD. Shaw and Hugh Rodman for the counties and cities, and laid over for further hearing until tomorrow.

Afterwards, on March 7, 1895, this order was made:

These causes again coming on to be heard, were argued by Wm. Goebel for the banks and H. C. Barker for the cities and counties, and laid over for further hearing on tomorrow.

And afterwards, on March 8, 1895, this order was made:

These causes again coming on to be heard, were argued by John W. Rodman and T. L. Edelen for the banks, and laid over for further hearing on tomorrow.

And afterwards, on March 9, 1895, this order was made:

These causes again coming on to be heard, were argued by James P. Helm for the banks, and laid over for further hearing on next Tuesday.

Afterwards, on March 12th, 1895, this order was made:

These causes again coming on to be heard, were argued by Wm. J. Hendrick for the Commonwealth and submitted.

Afterwards, at a court of appeals held as aforesaid on the 1st day of June, 1895, the following judgment was entered:

FARMERS' BANK OF KENTUCKY, Appellant,
versus
THE CITY OF HENDERSON, &c., Appellees,
} Appeal from Henderson Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erronous.

It is therefore considered that said judgment be reversed, and cause remanded for further proceedings consistent with the opinion herein; which is ordered to be certified to said court.

It is further considered that the appellant recover of the appellees its costs herein expended.

Judges Lewis, Paynter and Guffy dissenting.

Dissenting opinion by Judge Paynter.

COMMONWEALTH OF KENTUCKY:

I, A. Addams, clerk of the Kentucky court of appeals, hereby certify that the foregoing 14 pages contain a true, full and complete transcript of the record and proceedings had in said court in the case wherein The Farmers' Bank of Kentucky is appellant,
144 and The City of Henderson, &c., are appellees, except the opinions of the court, which are copied in the record in case

of Farmers' Bank of Kentucky *vs.* Board of Councilmen of City of Frankfort, &c., and except the proceedings upon and the petition for rehearing, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Ky., this 13th day of May, A. D. 1897.

ABRAM ADDAMS,
[SEAL.] *Clerk Kentucky Court of Appeals.*

Exhibit "K" reads as follows:

STATE OF KENTUCKY:

Henderson Circuit Court, September Term, 1895.

OCTOBER 29, 1895.

THE FARMERS' BANK OF KENTUCKY Plaintiff,
vs.
THE CITY OF HENDERSON ET AL., Defendants. } No. 860. In Equity.

This cause coming on to be further heard and the mandate of the court of appeals of Kentucky having been heretofore filed herein, whereby said court reversed the decision of the Henderson circuit court, and the plaintiff now filing herein the opinion of said court of appeals in which, in substance, it is decided that neither the capital stock, surplus fund, or undivided profits of the plaintiff bank, nor any of its property (save and except such real estate as is specifically mentioned in chapter 92, article 2, section 7, of the General Statutes of Kentucky, commonly called the Hewitt law) shall be or is subject to municipal taxation, or taxation by any county of this Commonwealth, during the corporate existence of the bank; and defendant- declining to plead further, it is therefore adjudged that the injunction prayed for by the plaintiff herein is granted, and that defendants be, and they are, enjoined and restrained from collecting from the plaintiff, the said bank, the amount set forth in the petition as taxes and penalty claimed by said city as assessed against said bank for the year 1893, or any other tax or taxes, and from levying upon or selling the real estate or any other property of the plaintiff, and that said injunction be, and is hereby, made perpetual, also that the aforesaid tax or penalty in the petition mentioned is illegal and void, and that the plaintiff recover from the defendant, The City of Henderson, the costs of this action, for which execution may be issued.

A copy.
Attest:

S. A. YOUNG, *C. H. C. C.*,
By J. R. LAMBERT, *D. C.*

And on the same day, to wit, on May 8th, 1897, the following subpœna in chancery was issued by the clerk of this court upon the filing of said bill of complaint, viz:

The United States of America to the marshal of the Kentucky district, Greeting:

You are hereby commanded to summon Samuel H. Stone, Charles Finley, George W. Long, the Board of Councilmen of the City
145 of Frankfort, the County of Franklin, the City of Henderson, the County of Henderson, the City of Georgetown and the County of Scott to appear before our circuit court of the United States of America of the district of Kentucky, at the Federal court hall, in the city of Frankfort, on the first Monday in June next, to answer a bill in equity, exhibited against them in our said court, by the Farmers' Bank of Kentucky, and this they shall in nowise omit, under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof, Melville W. Fuller, Esq., Chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, at the clerk's office of said court in Frankfort, this 8th day of May, A. D. 1897, and in the 121st year of our Independence.

Attest: W. G. CHAPMAN, *C. C. C., K. D.*,
By CHAS. N. WIARD, *Deputy.*

MEMORANDUM.—The said defendants are required to enter their appearance in the clerk's office of said court, on or before the first Monday in June, 1897, otherwise the said bill will be taken *pro confesso.*

W. G. CHAPMAN, *Clerk*,
By CHAS. N. WIARD, *D. C.*

And on the day following, to wit, on the 28th day of May, 1897, said subpœna in chancery was returned and filed with the following return endorsed thereon, viz:

Executed May 10, 1897, on the County of Franklin by delivering a copy of within spa. in chy. to B. G. Williams, judge of said county; on the Board of Councilmen of the City of Frankfort, by delivering a copy of within to Ira Julian, mayor of said city; executed May 11th, on the County of Scott by delivering a copy of within to W. E. Bates, judge of said county; executed on the City of Georgetown, by delivering a copy of within to J. E. Pack, mayo[illegible]f said city; executed May 14th, on Geo. W. Long; May 15t[illegible] Chas. Finley and Samuel H. Stone, by delivering to each of t[illegible] a copy of the within. City of Henderson and County of Henderson not served.

JAMES BLACKBURN,
United States Marshal,
By P. D. TUCKER, *D. M.*

Fees	14.00
77 miles....	4.62
	$18.62

Executed May 25, 1897, on the County of Henderson, by delivering a copy of within spa. in chy. to E. C. Ward, judge of
146 said county; on the City of Henderson, by delivering a copy of within spa. to A. J. Washam, mayor of said city.

JAMES BLACKBURN,
United States Marshal,
By M. BULLINGTON, *D. M.*

Fees	4.00
Expense	2.00
	$6.00

And on the same day, to wit, on May 28th, 1897, the following notice of motion for interlocutory injunction was filed herein, viz:

Circuit Court of the United States, Sixth Circuit.

FARMERS' BANK OF KENTUCKY, Complainants,
versus
SAMUEL H. STONE, ETC., Defendants.
} Notice.

The defendants, Samuel H. Stone, Charles Finley, G. W. Long, The Board of Councilmen of the City of Frankfort, County of Franklin, City of Henderson, County of Henderson, The City of Georgetown and The County of Scott will take notice that on Friday, May 28th, 1897, at the Federal court-room in Nashville, Tennessee, *on* or about the hour of 10 a. m., or when the court shall convene, the complainant will move the court to grant to it an interlocutory injunction herein, restraining the board of valuation and assessment from making any return of assessment of the complainant's property to any of the municipalities named in the bill, and restraining each and every of said municipalities from endeavoring to collect any taxes for any of the years set out in the bill of complaint; the said motion to be made upon the bill of complaint and accompanying exhibits.

W. S. PRYOR AND
JNO. W. RODMAN,
Counselors for Complainant.

The affiant, W. H. Negley, states that he served the within notice on the County of Henderson by delivering a copy thereof to E. C. Ward, the county judge of Henderson county, on the 18th day of May, 1897, and upon the City of Henderson by delivering a copy thereof to A. J. Worsham, the mayor of the city of Henderson on the 18th day of May, 1897. Affiant states that he is over twenty-one years of age, that he is not a party to, or interested in this action.

W. H. NEGLEY.

Sworn to before me by W. H. Negley, this 18th day of May, 1897.

S. A. YOUNG, *C. H. C. C.*

147 And on same day, to wit, on the 28th day of May, 1897, the following notice of motion for interlocutory injunction was filed herein, viz:

Circuit Court of the United States, Sixth Circuit.

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendants. } Notice.

The defendants, Samuel H. Stone, Charles Finley, G. W. Long, The Board of Councilmen of the City of Frankfort, County of Franklin, City of Henderson, County of Henderson, The City of Georgetown and The County of Scott, will take notice that on Friday, May 28th, 1897, at the Federal court-room in Nashville, Tennessee, *on* or about the hour of 10 a. m., or when the court shall convene, the complainant will move the court to grant to it an interlocutory injunction herein, restraining the board of valuation and assessment from making any return of assessment of the complainant's property to any of the municipalities named in the bill, and restraining each and every of said municipalities from endeavoring to collect any taxes for any of the years set out in the bill of complaint; the said motion to be made upon the bill of complaint and the accompanying exhibits.

W. S. PRYOR,
JNO. W. RODMAN,
Counselors for Complainant.

Accepted service of within notice this May 17, 1897.
S. H. STONE, *Auditor.*
G. W. LONG, *Treasurer.*

I hereby accept service of within notice, May 17, 1897.
CHAS. FINLEY.

I accept service of this notice, May 17, 1897.
B. G. WILLIAMS,
P. J., F. C. C.

I hereby accept service of the within notice, May 17, 1897.
IRA JULIAN,
Mayor of Frankfort.

Executed the within notice upon Samuel H. Stone, Chas. Finley, G. W. Long, by delivering to each of them a copy of the within notice, this May 17, 1897. Also executed the within notice upon the Board of Councilmen of the City of Frankfort, by delivering a copy thereof to Ira Julian, mayor of the city of Frankfort, this May 17, 1897. Also executed the within notice upon the County of Franklin, by delivering a copy thereof to B. G. Williams, county judge of said Franklin county, this May 17, 1897. I am over twenty-one years of age, and am not an attorney in, nor have any interest in this suit.

D. W. LINDSEY, JR.

Subscribed and sworn to by D. W. Lindsey, Jr., before me, this May 17, 1897.

T. N. LINDSEY,
Notary Public, Franklin Co., Ky.

Commission expires January 14, 1898.

148 And on the same day, to wit, on the 28th day of May, 1897, the following notice of motion for interlocutory injunction was filed herein, viz:

Circuit Court of the United States, Sixth Circuit.

FARMERS' BANK OF KENTUCKY, Complainants,
versus
SAMUEL H. STONE, ETC., Defendants. } Notice.

The defendants, Samuel H. Stone, Charles Finley, G. W. Long, The Board of Councilmen of the City of Frankfort, County of Franklin, City of Henderson, County of Henderson, The City of Georgetown and The County of Scott, will take notice that on Friday, May 28, 1897, at the Federal court-room in Nashville, Tennessee, *on* or about the hour of 10 a. m., or when the court shall convene, the complainant will move the court to grant to it an interlocutory injunction herein, restraining the board of valuation and assessment from making any return of assessment of the complainant's property to any of the municipalities named in the bill, and restraining each and every of said municipalities from endeavoring to collect any taxes for any of the years set out in the bill of complaint; the said motion to be made upon the bill of complaint and upon the accompanying exhibits.

W. S. PRYOR,
JNO. W. RODMAN,
Counselors for Complainant.

The affiant, Jno. R. Downing, states that he served the within notice on the County of Scott by delivering a copy thereof to W. E. Bates, the county judge of Scott county, on the 18th day of May, 1897, and upon the City of Georgetown, by delivering a copy thereof to Jno. E. Pack, the mayor of the city of Georgetown, on the 18th day of May, 1897. Affiant states that he is over twenty-one years of age, that he is not a party to or interested in this action.

JNO. R. DOWNING.

Subscribed and sworn to before me this 18th day of May, 1897.
[SEAL.] JNO. W. CHAPMAN, *N. P., S. C.*

My commission expires January 8, 1898.

And on the same day, to wit, on the 28th day of May, 1897, the following plea of the Board of Councilmen of the City of Frankfort and the County of Franklin to the bill of complaint was filed herein, viz:

Circuit Court of the United States for Sixth Circuit and District of Kentucky.

FARMERS' BANK OF KENTUCKY
against
SAMUEL H. STONE, THE BOARD OF COUNCILMEN OF THE City of Frankfort, The County of Franklin, and Others. } In Equity.

The plea of the above-named Board of Councilmen of the City of Frankfort and County of Franklin, defendants, to the bill of complaint of the above-named Farmers' Bank of Kentucky, complainant.

149 These defendants (Board of Councilmen of the City of Frankfort and Franklin County), by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, do plead thereto, and for plea say: that this court has no jurisdiction of the matters and things set forth and alleged in the said bill, and humbly crave the judgment of this honorable court whether or not they ought to be compelled to make any further or other answer to said bill.

JAS. H. POLSGROVE,
County Attorney, Franklin County.
IRA & W. H. JULIAN,
For Defendants Board of Councilmen of the City of Frankfort and Franklin County.

And on the same day, to wit, on the 28th day of May, 1897, the following demurrer was filed herein by the Board of Councilmen of the City of Frankfort and the County of Franklin, viz:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FARMERS' BANK OF KENTUCKY
versus
SAMUEL H. STONE, BOARD OF COUNCILMEN OF THE City of Frankfort, The County of Frankfort, and Others. } In Equity.

The demurrer of the above-named Board of Councilmen of the City of Frankfort and County of Franklin, defendants, to the bill of complaint of the above-named Farmers' Bank of Kentucky, complain-t.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, doth demurr to the said bill, and for cause of demurrer showeth:

That it appeareth by the complainant's own showing by the said

bill, that it is not entitled to the relief prayed for by the bill against these defendants.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants doth demur thereto and pray the judgment of this honorable court, whether or not they shall be compelled to make any answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

JAS. H. POLSGROVE,
County Attorney, Franklin Co.
IRA & W. H. JULIAN,
For the Board of Councilmen of the City of Frankfort and Franklin County.

150 And on the same day, to wit, on the 28th day of May, 1897, the following demurrer was filed herein by defendants Stone, Finley, and Long, viz:

In the Circuit Court of the United States, for the Sixth Circuit and District of Kentucky.

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendants.
} No. 274.

The demurrer of the defendants Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer, of the State of Kentucky, to the bill of complaint — Farmers' Bank of Kentucky, complainant.

These defendants, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained, to be true, in such manner and form as the same is therein set forth and alleged, demur to said bill and for cause of demurrer state:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against these defendants.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

I hereby certify, as counsel for the defendants Samuel H. Stone, auditor, Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky, in the foregoing demurrer, that,

in my opinion the same is well founded in point of law and proper to be filed.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

And on the same day, to wit, on the 28th day of May, 1897, the following answer was filed herein by the defendants The Board of Councilmen of the City of Frankfort and The County of Franklin, viz:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THE FARMERS' BANK OF KENTUCKY *against* SAMUEL H. STONE, CHARLES FINLEY, GEORGE W. LONG, Board of Councilmen of the City of Frankfort, County of Franklin, City of Henderson, County of Henderson, City of Georgetown, and County of Scott.	In Equity.

Answer of the above-named Board of Councilmen of the City of Frankfort and County of Franklin, defendants, to the bill of complaint of the above-named Farmers' Bank of Kentucky.

151 In answer to the said bill, without waiving demurrer to the jurisdiction, or the general demurrer to the bill, but reiterating and relying upon the same, the board of councilmen of the city of Frankfort, and county of Franklin, say as follows:

(Responding to each of the XX paragraphs or sections of the bill separately.)

I.

'Tis true that complainant is a corporation duly incorporated, etc. as stated in the first paragraph of the bill.

II.

The allegations of the second paragraph of the bill are true.

III.

The allegations of the third paragraph of the bill are true.

IV.

The allegations of the fourth paragraph of the bill are true.

V.

The allegations of the fifth paragraph of the bill are true, except the statement following: "Complainant states that said tax of fifty (50) cents on each share of its stock was a tax then largely in excess of the ordinary rate of taxation paid by other moneyed capital or property in the State of Kentucky, including municipal and county

taxes." This (the said) allegation, these defendants deny; and allege that, in 1850, the *ad valorem* levy of the city of Frankfort, alone, was fifty (50) cents per hundred dollars, to which were added the State and county levies. Ever since 1850, said taxes, especially the local taxes, have steadily increased, until now (1897), in the city of Frankfort, they aggregate sum of $2.56\frac{3}{4}$, per $100.00.

VI.

These defendants deny that, by the settled course of decisions of the highest court of this State, the meaning of complainant's charter has been fixed and determined to be an irrevocable contract. The original charter of the Farmers' bank merely fixed the rate of taxation, and was not an irrevocable contract. As set forth in the bill, the present charter of that bank expressly provides, that same shall be subject to alteration, amendment or repeal, either by general or special act. In the case of Farmers' Bank *vs.* Commonwealth and Greenup County, 6 Bush, page 127, no question of contract was made or decided. Besides, same was in 1869, under the original charter of said bank.

152 The decision of the Kentucky court of appeals rendered on June 5, 1888, and reported in Kentucky Law Reporter, page 513, was under the present charter of said bank, and held, notwithstanding the charter itself expressly subjected the bank to legislative control in the matter of taxation, that same constituted an irrevocable contract of exemption from taxation.

VII.

The allegations of the seventh paragraph of the bill are true, except the following statement: "In both of these causes, the contract between this complainant and the State of Kentucky, as herein set up, was fully pleaded and alleged, and relief was asked for upon the basis thereof." Every part of this (the said) statement, these defendants deny. As to same, these defendants allege: That the Farmers' bank did not in either of said causes plead, allege, or rely upon any contract between it and the State, and did not in either of said causes ask relief upon the basis of any contract.

The said causes are those cited in the next preceeding paragraph of this answer, in which the court of appeals (speaking through Judge Bennett) held that the charter of the Farmers' bank, after the renewal thereof, with the express provision therein that same should thereafter be subject to alteration, amendment or repeal either by general or special act, constituted an irrevocable contract of exemption from taxation.

VIII.

The allegations of the eighth paragraph of the bill are true.

IX.

The allegations of the ninth paragraph of the bill are true.

X.

The allegations of the tenth paragraph of the bill are true, except the last eleven (11) lines thereof. Every allegation of those eleven lines these defendants deny. These defendants deny that it has ever been the policy of the State to lessen the rate of taxation on the full amount of the capitel stock of the bank for any reason or upon any ground, and allege, that the stock of the Farmers' bank is, and has been for years last past, worth about twenty-five per cent. above par; and that said bank now habitually loans its money, and has for years last past habitually loaned its money, at a rate of interest exceeding eight per cent. per annum.

XI.

These defendants deny that the present system of taxation in Kentucky violates any contract, and deny that same violates the Constitution of the United States.

153 XII.

These defendants deny that the present system of taxation in Kentucky violates the constitution of Kentucky.

XIII.

The allegations of the thirteenth paragraph of the bill are true.

XIV.

These defendants deny that the judgment of the Franklin circuit court in the case of complainant against Franklin county, set forth in the fourteenth paragraph of the bill, is now in full force and effect.

XV.

The allegations of the fifteenth paragraph of the bill are true.

XVI.

The allegations of the sixteenth paragraph of the bill are true.

XVII.

As to the seventeenth paragraph of the said bill, these defendants deny that it has been fully or finally or at all adjudicated that that complainant is protected by contract from local taxation. These defendants deny that it has been fully or finally or at all adjudicated that complainant may, in any event, be restored to taxation as provided in its charter. These defendants deny that the legislature ever granted to complainant or entered into with complainant any irrevocable contract of exemption from taxation; as fully appears from the language of article two (2) of the Hewitt act itself, and the house and senate journals of 1886, which journals are here referred to as part hereof. House Journal, pages 1241 and 1295, and Senate Journal, page 1315.

These defendants deny every allegation of the said seventeenth paragraph. There has never been but one decission of the Kentucky court of appeals to the effect, that article two (2) of the Hewitt act constituted an irrevocable contract. That was rendered on June the 1st, 1895, by a divided court, in the consolidated cases referred to and exhibited in the bill herein. The three cases of complainant against these defendants and the City of Henderson, which arose under the Hewitt act, and which are set forth in the bill as separate adjudications, were included in the said consolidated cases and were all decided by the court of appeals, at the same time, in one opinion, the said opinion rendered on June the 1st, 1895. In those cases Judge Pryor delivered the opinion. Three (3) of the seven appellate judges concurred with him therein and three (3) of the said judges dissented therefrom in an elaborate dissenting opinion.

154 The petition for rehearing in those cases was overruled on October the 8th, 1895. The time for an appeal therefrom has not yet expired, and may yet be prosecuted. In the trial of same, these defendants relied upon the Constitution of the United States. The matter of said appeal has heretofore been in abeyance, awaiting decision in other cases. When said petition for rehearing was overruled on October the 8th, 1895, there were left pending in the said court of appeals, other cases, from the city of Owensboro and elsewhere, which involved the same questions as the said consolidated decided, as above stated, by the divided court. The said remaining cases having been heard and maturely considered, on March the 24th, 1897, in the case of Deposit Bank of Owensboro *vs.* Davies County, and other cases consolidated therewith, the said opinion rendered on June the 1st, 1895, (upon which alone the complainant herein relies), was entirely overruled and abrogated by the court of appeals of Kentucky. The said opinion rendered on March the 24th, 1897, *holds:* That complainant is not, and was never, under its present charter, protected by contract from local taxation—that neither its charter, nor article (2) of the Hewitt act constitutes an irrevocable contract between the bank and the State—that article two (2) of the Hewitt act, having expressly provided in the sixth section thereof, that it should be subject to alteration, amendment or repeal, the same was so subject, and was repealed by the State constitution of 1891 and the revenue law of 1892; and that said repeal does not impair the obligation of any contract, nor restore complainant to any contract right of exemption under its charter. A certified copy of said opinion rendered on March the 24th, 1897, is filed herewith as part hereof. Certified copies of the records of the cases in which this (the said) opinion was rendered will be filed herewith as part hereof, if required. A petition for rehearing in the said last-named cases is now pending, but same will probably be passed upon before June the 20th next. When that petition has been passed upon, these defendants will ask permission of this court to file herein a supplement to this answer, setting forth the ruling of the court of appeals upon said petition. Further answering, these defendants say that the judgments (set forth in the bill) entered in the Franklin circuit court, under said overruled

opinion, in the cases of complainant against these defendants, are erroneous and not in accordance with the mandate of the court of appeals therein, and void in so far as the same may apply to the taxes in controversy herein. None of the taxes now in controversy were involved in those two cases.

XVIII.

If complainant was, by repeal of the Hewitt act, "restored to its former position under its charter," the Farmers' bank was and is, nevertheless, subject to legislative control, by virtue of its charter.

155 XIX.

These defendants deny, that Samuel H. Stone, Charles Finley, and George W. Long are threatening to or will value the franchise of complainant, or are threatening to or will certify the valuation of said franchise to any county clerk, otherwise than in accordance with the revenue act of November the 11th, 1892 (cited in the bill herein), as construed by the court of last resort of the State.

These defendants deny, that such valuation and certification would be illegal or violative of any contract between complainant and the State, or would cast a cloud over complainant's franchise, or would cause a multiplicity of suits to be brought against complainant, or would damage complainant in a way that could not be repaired or estimated at common law.

These defendants deny that complainant has no remedy at law for the wrongs complained of. Under the laws of Kentucky complainant may pay the taxes in controversy under protest, and afterward in a single suit at law have its right adjudicated and enforced. These defendants allege that each of these defendants is solvent and amply able to reimburse complainant for any loss it may in any event sustain by reason of the wrongs alleged in the bill. These defendants deny that they or either of them will collect or attempt to collect of complainant any tax otherwise than in accordance with the said revenue law of 1892 as construed by the court of last resort of the State, or will subject complainant to the harassment of many suits, or will cast a cloud upon its franchise or property, or will attempt to enforce any penalties against complainant otherwise than as provided by law.

XX.

These defendants allege that to grant the injunction prayed for would be (in effect) to enjoin the State of Kentucky, through her officers, from executing the State constitution and the present revenue law of the State as construed by the court of last resort of the State. These defendants allege that to grant the injunction prayed for would be (in effect and in fact) to enjoin proceedings in the State courts for collection of the taxes in controversy, contrary to section 720 of the Revised Statutes of the United States. The laws of Kentucky authorize the collection of taxes by suit in the circuit and

county courts of the State. There is now pending in the Franklin circuit court at Frankfort, Ky., a suit by these defendants against complainant and others for mandamus to ocmpel the State board of assessment to value and apportion complainant's franchise, and the auditor (Samuel H. Stone) to certify the valuation and apportionment thereof to the county clerk of Franklin county, in order to collection of the taxes, now in controversy herein between these defendants and complainant.

These defendants submit that there is no equity in the bill; that the injunction prayed for ought not to be granted, and that
156 this court will not exercise jurisdiction of the cause, and pray that the said bill be dismissed with costs.

JAS. H. POLSGROVE,
County Attorney, Franklin County.
W. H. SNEED,
City Attorney for the City of Frankfort.
IRA & W. H. JULIAN,
Assistant Counsel.

Personally appeared before me, H. M. Doak, clerk of the circuit court of the United States in and for the middle district of Tennessee, Ira Julian, mayor city of Frankfort, with whom I am personally acquainted, and made oath that the matters and things stated in the foregoing answer are true, where they are stated as of his own knowledge, and where they are stated on information or belief he verily believes them to be true.

IRA JULIAN,
Mayor of the City of Frankfort, Ky.

Sworn to and subscribed before me this the 28th day of May, A. D. 1897.

H. M. DOAK, *Clerk.*

And on a day following, to wit, on June 7th, 1897, the following entry was made herein at rules, viz:

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAM'L H. STONE ET AL., Defendants.

This day came the City of Henderson, by its attorneys, Clay & Clay and filed its answer to the bill of complaint herein.

Came also the County of Henderson, by its attorney, W. J. Peter, and filed its answer to the bill of complaint herein.

Said answer of the County of Henderson, Kentucky, filed herein at rules on June 7th, 1897, was and is in words and figures as follows, viz:

In the Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendant-. } In Equity.

Answer of the County of Henderson, Ky., to the Bill of Complaint of The Farmers' Bank of Kentucky, Complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefits and advantage of exception which can or may be had, or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make, answering:

The defendant admits the truth of the allegations contained in the first, second, third and fourth paragraphs of complainant's bill. For answer to the fifth paragraph of complainant's bill, the defendant denies that the tax of fifty cents on each share of complainant's stock was a tax then largely in excess of the ordinary rate of taxation paid by other moneyed capital in the State of Kentucky, including municipal and county taxes, or that it continued to be so in excess until a long time thereafter.

For answer to the sixth paragraph of the bill, defendant denies that by the settled course of decisions of the highest courts in this State the meaning of those provisions mentioned in the bill of complainant, of its charter, has been fixed or determined.

157 Answering the eleventh paragraph of the bill of complainant, the defendant denies that this scheme of taxation (as set forth in bill of complaint) violates the contract made between it and the State in its charter and the amendments thereto; it denies there was a contract, or that it violates the contract made between the State under the Hewitt law; it denies there was a contract under said law, or that it is very largely in excess of the taxation provided for by its charter or by said Hewitt law, and it denies that the act of the legislature instituting such a method of taxation is violative of the United States Constitution, or of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract is void.

For answer to so much of the tenth paragraph as it is advised requires answering, defendant denies that it has been the policy of the State by legislation sustained by judicial decisions to lessen the rate of taxation on the full amount of the capital stock of the bank because the banks pay tax on the full par value of its capital stock, or because of their being prevented by law from loaning their money at a greater rate of interest than six per cent., whereas the citizens and other tax-payers under our system of valuation are by giving them their property for taxation at not exceeding one-half of the value of the property assessed, thereby making the banks even under the 75c. rate pay much more than other tax-payers. It denies that

the property of individuals is assessed for taxation at not exceeding one-half of the value of the property.

For answer to the twelfth paragraph of the bill, defendant denies that the method of taxation is also violative of the constitution of the State of Kentucky.

For answer to the seventeenth paragraph, defendant denies that it has been fully and finally adjudicated in a proceeding between it and the defendant, The Board of Councilmen of the City of Frankfort, The County of Frankfort, or The City of Henderson, that complainant's contract is valid and enforceable, or that the complainant can be subjected to no greater rate of taxation than that agreed to by it under the Hewitt law; it denies that if the Commonwealth of Kentucky shall be adjudged to have retired from said contract, it denies there was a contract, then to no greater rate of taxation than is provided for under complainant's charter and amendments.

Answering the eighteenth paragraph, defendant denies that if it should be determined that the State of Kentucky has the right to retire from that contract that the complainant is entitled to be restored to its former position.

Answering the nineteenth paragraph, defendant denies that the defendants, Samuel H. Stone, Charles Finley or Geo. W. Long, are threatening, or unless restrained by this honorable court will proceed to value the franchise of the complainant in the manner set forth under the act of November 11, 1892, for the years 1895, 1896 or 1897, or to certify such values to the county clerk of Henderson county, or to be by said clerk certified to the collecting
158 officers thereof, it denies that such assessments will be illegal, or in violation of complainant's alleged contract, or that it will be unlawful or violative of complainant's alleged contract, or will cast a cloud over complainant's franchise, or cause a multiplicity of suits to be brought against complainant, or damage it in a way that cannot be repaired or estimated at common law, or that for these threatened wrongs, it denies there are any threatened wrongs, the complainant has no remedy at common law, or that its only remedy is by a bill in equity, or unless restrained by this honorable court the defendant will attempt to levy and collect taxes based upon the apportionment of the valuation found by said board of valuation and assessment, or will subject complainant to the harassment of many suits or cast a cloud upon its franchise or property, or that any e[illegible] will be made to enforce penalties against the complainant.

This defendant, [illegible]r further answer and defense to complainant's bill, states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensboro *vs.* Daviess County, and other bank-tax cases wherein the same legal questions were involved, and issues were made, as in the cases referred to in the complainant's bill, rendered a decision in which the former decisions of said court, in said cases delivered, were expressly overruled; and the said court furthermore decided that no bank, State or national, trust company, or other similar institution in the State of Kentucky, had, or was entitled to, an irrepealable contract with the State under the

provisions of the Hewitt bill, or by reason of its acceptance of, or compliance with, those provisions, and that the same, with respect to all of said banks and similar institutions in the State, were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and were bound and liable to pay State, county and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2) of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation, provided for in said article of said act, which expressed reservation of power to amend or repeal, formed a part of the contract, if any, between the State and the banks and other similar institutions which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill, with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such bank, but that said repeal was only a legitimate exercise of the said reserved power of the legislature to amend or repeal, and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charter of said bank, was a grant to said corporation and extension of the period of its charter existence,
159 within the purview of the statutes of February 14, 1856, referred to in complainant's bill, and were subject to amendment or repeal by the legislature. The defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to taxation, were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals, does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks which were parties in said cases so decided, to wit, sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have been filed, nor have the petitions for rehearing been passed upon, nor the decision of the court become final.

This defendant, while disavowing any intention or purpose on its part, to collect or attempt to collect municipal taxes from the complainant, held to be unlawful by said decision of the court of appeals of Kentucky, of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

The defendant states that the complainant, has not filed its

annual report for the years 1895, 1896 and 1897, with the auditor, or the State board of valuation and assessment, as required by the revenue laws of November 11, 1892.

Further answering, defendant submits that all the questions involved in this case are, as herein set forth, now pending in the court of appeals of Kentucky upon petition for rehearing which have not as yet been disposed of, and it would be a conflict of authorities, such as should be avoided, for this court to assume jurisdiction in this case.

Defendant submits that complainant is entitled to no injunction, nor to any equitable relief in this court.

Wherefore, having answered, this defendant prays that the bill of complainant be dismissed, with judgment for its costs, and for all other relief, to which it in equity may appear to be entitled.

W. J. PETER,
Attorney and Solicitor for County of Henderson.

160 Said answer of the City of Henderson, Kentucky, filed herein at rules on June 7th, 1897, was and is in words and figures as follows, viz:

In the Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FARMERS' BANK OF KENTUCKY, Complainant,
versus
SAMUEL H. STONE, ETC., Defendant-. } In Equity.

Answer of the City of Henderson, Ky., to the Bill of Complaint of The Farmers' Bank of Kentucky, Complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefits and advantage of exception which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make, answering:

The defendant admits the truth of the allegations contained in the first, second, third and fourth paragraphs of complainant's bill. For answer to the fifth paragraph of complainant's bill, the defendant denies that the tax of fifty cents on each share of complainant's stock was a tax then largely in excess of the ordinary rate of taxation paid by other moneyed capital in the State of Kentucky, including municipal and county taxes, or that it continued to be so in excess until a long time thereafter.

For answer to the sixth paragraph of the bill, defendant denies that by the settled course of decisions of the highest courts in this State, the meaning of those provisions mentioned in the bill of complainant, of its charter has been fixed or determined.

Answering the eleventh paragraph of the bill of complainant, the defendant denies that this scheme of taxation (as set forth in bill of complaint) violates the contract made between it and the State

in its charter and the amendments thereto; it denies there was a contract, or that it violates the contract made between the State under the Hewitt law, it denies there was a contract under said law, or that it is very largely in excess of the taxation provided for by its charter or by said Hewitt law; and it denies that the act of the legislature instituting such a method of taxation is violative of the United States Constitution, or of the clause thereof prohibiting any State from passing a law which shall impair the obligation of a contract is void.

For answer to so much of the tenth paragraph as it is advised requires answering, defendant denies that it has been the policy of the State by legislation sustained by judicial decisions to lessen the rate of taxation on the full amount of the capital stock of the bank, because the banks pay tax on the full par value of its capital stock, or because of their being prevented by law from loaning their money at a greater rate of interest than six per cent, whereas the citizens and other tax-payers under our system of valua-
161 tion are, by giving them their property for taxation at not exceeding one-half of the value of the property assessed, thereby making the banks, even under the seventy-five-cent rate, pay much more than other tax-payers. It denies that the property of individuals is assessed for taxation at not exceeding one-half of the value of the property.

For answer to the twelfth paragraph of the bill, defendant denies that the method of taxation is also violative of the constitution of the State of Kentucky.

For answer to the seventeenth paragraph defendant denies that it has been fully and finally adjudicated in a proceeding between it and the defendant, The Board of Councilmen of the City of Frankfort, The County of Franklin, or The City of Henderson, that complainant's contract is valid and enforceable, or that the complainant can be subjected to no greater rate of taxation than that agreed to by it under the Hewitt law; it denies that if the Commonwealth of Kentucky shall be adjudged to have retired from said contract, it denies there was a contract then to no greater rate of taxation than is provided for under complainant's charter and amendments.

Answering the eighteenth paragraph defendant denies that if it should be determined that the State of Kentucky has the right to retire from that contract that the complainant is entitled to be restored to its former position.

Answering the nineteenth paragraph, defendant denies that the defendant Samuel H. Stone, Charles Finley or Geo. W. Long are threatening, or unless restrained by this honorable court will proceed to value the franchise of the complainant in the manner set forth under the act of November 11th, 1892, for the years 1895, 1896 or 1897, or to certify such values to the county clerk of Henderson county or to be by said clerk certified to the collecting officers thereof; it denies that such assessments will be illegal, or in violation of complainant's alleged contract, or that it will be unlawful or violative of complainant's alleged contract, or will cast a cloud

over complainant's franchise, or cause a multiplicity of suits to be brought against complainant; or damage it in a way that cannot be repaired or estimated at common law, or that for these threatened wrongs, it denies there are any threatened wrongs, the complainant has no remedy at common law, or that its only remedy is by a bill in equity; or unless restrained by this honorable court the defendant will attempt to levy and collect taxes based upon the apportionment of the valuation found by said board of valuation and assessment, or will subject complainant to the harassment of many suits or cast a cloud upon its franchise or property, or that any effort will be made to enforce penalties against the complainant.

This defendant, for further answer and defense to complainant's bill, states that the court of appeals of Kentucky, on March 24th,
1897, in the case of Deposit Bank of Owensboro *vs.* Daviess
162 County, and other bank-tax cases, wherein the same legal questions were involved, and issues were made, as in the cases referred to in the complainant's bill, rendered a decision in which the former decisions of said court, in said cases delivered, were expressly overruled; and the said court furthermore decided that no bank, State or national, trust company, or other similar institution in the State of Kentucky, had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of, or compliance with, those provisions, and that the same, with respect to all of said banks and similar institutions in the State, were repealed by the State constitution of September 28th, 1891, and the general revenue law of November 11th, 1892, and were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2), of said act of May 17th, 1886, the power at will to amend, or repeal the scheme of bank taxation provided for in said article of said act, which expressed reservation of power to amend or repeal formed a part of the contract, if any between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill, with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11th, 1892, did not impair the obligation of any contract with such bank, but that said repeal was only a legitimate exercise of the said reserved power of the legislature to amend or repeal, and that the acts of the legislature, adopted subsequent to February 14th, 1856, amending the original charter of said bank was a grant to said corporation and extension of the period of its charter existence, within the purview of the statutes of February 14th, 1856, referred to in complainant's bill, and were subject to amendment or repeal by the legislature. The defendant states that by the concluding section of said revenue law of November 11th, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to taxation, were repealed.

This defendant states that said decision of March 24, 1897, by the

rules of said court of appeals, does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks which were parties in said cases so decided, to wit, sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have been filed, nor have the petitions for rehearing been passed upon, nor the decision of the court become final.

163 This defendant, while disavowing any intention or purpose, on its part, to collect, or attempt to collect municipal taxes from the complainant, held to be unlawful by said decision of the court of appeals of Kentucky, of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

The defendant states that the complainant has not filed its annual report for the years 1895, 1896 and 1897, with the auditor, or the State board of valuation and assessment, as required by the revenue laws of November 11, 1892.

Further answering, defendant submits that all the questions involved in this case are, as herein set forth now pending in the court of appeals of Kentucky upon petition for rehearing which have not as yet been disposed of, and it would be a conflict of authorities, such as should be avoided, for this court to assume jurisdiction in this case.

Defendant submits that complainant is entitled to no injunction, nor to any equitable relief in this court.

Wherefore, having answered, this defendant prays that the bill of complainant be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

CLAY & CLAY,
Attorneys and Solicitors for City of Henderson.

Heretofore, to wit, on May 28th, 1897, the following order was made and entered herein, viz:

United States Circuit Court for the Sixth Circuit, District of Kentucky, at Frankfort.

FARMERS' BANK OF KENTUCKY, Complainant,
versus
SAMUEL H. STONE, ETC., Defendant.

This day came the Farmers' Bank of Kentucky, by John W. Rodman, counsel, and filed herein notices duly served upon all the

defendants, and moved the court to grant to it an interlocutory injunction during the pendency of this cause against the defendants, Samuel H. Stone, Geo. W. Long and Chas. Finley, enjoining and restraining them from making any assessment or valuation of the franchises or intangible property of the complainant under the act of November 11th. 1892. And against the defendants, The Board of Councilmen of the City of Frankfort, and County of Franklin, and City of Georgetown and County of Scott, and City of Henderson and County of Henderson, from attempting to collect any taxes thereon.

Thereupon, came said Board of Councilmen of the City of Frankfort and Franklin County, by Ira Julian and J. H. Polgroves,
164 counsel, and the City of Henderson by Jas. F. Clay and the County of Henderson by E. C. Ward, and W. J. Peter, and objected to the said motion, and filed special and general demurrers to the bill of complaint. And the same having come on to be heard, and argued by counsel, was submitted, and the court not being advised, takes time.

And thereupon, at the same time, came the defendants, Samuel H. Stone, Geo. W. Long and Chas. Finley, by W. S. Taylor, attorney general, and filed herein their demurrers to the bill of complaint; and also came the Board of Councilmen of the City of Frankfort, and the County of Franklin, by Ira Julian and J. H. Polgroves, and filed herein their demurrers to the said bill of complaint, and by stipulation, without waiving the same, their answers.

And the said cause having come on to be heard upon the said demurrers, and argued by counsel, was submitted, and the court not being advised, takes time.

WM. H. TAFT,
Circuit Judge.

May 28, 1897.

165 And on day following, to wit, on the 5th day of July, 1897, the following entry was made herein at rules, viz:

FARMERS' BANK OF KENTUCKY
vs.
SAM'L H. STONE ET AL.

This day came the complainant herein, by its attorneys, W. S. Pryor and John W. Rodman, and filed its replications to the answers of the County of Henderson, the City of Henderson, and of the City of Frankfort and County of Franklin.

Said replication to the answer of the County of Henderson is in words and figures as follows, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendant-.

Replication of the Complainant to the Answer of the County of Henderson.

This repliant, saving and reserving to itself all advantage of exception to the insufficiencies of the answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter of thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. S. PRYOR &
J. W. RODMAN,
Solicitors for Complainant.

166 Said replication to the answer of the City of Henderson is in words and figures as follows, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendant-.

Replication of the Complainant to the Answer of the City of Henderson.

This repliant, saving and reserving to itself all advantage of exception to the insufficiencies of the answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. S. PRYOR AND
J. W. RODMAN,
Solicitors for Complainant.

Said replication to the joint answer of the City of Frankfort and County of Franklin is in the following words and figures, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, ETC., Defendants.

Replication of the Complainant to the Joint Answer of the Board of Councilmen of the City of Frankfort and Franklin County.

167 This repliant, saving and reserving to itself all advantage of exception to the insufficiencies of the answer, for replication thereto saith that it will aver and prove its said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. S. PRYOR AND
J. W. RODMAN,
Solicitors for Complainant.

And on a day following, to wit, on the 9th day of May, 1898, the following entry was made herein, viz:

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, &C., Defendants.

DEPOSIT BANK OF FRANKFORT, Complainant,
vs.
SAMUEL H. STONE, &C., Defendants.

Came this day the complainants in the above-styled causes, wherein Samuel H. Stone is one of the defendants, and filed herein an amended and supplemental bill of complaint, and the complainants in said several cases also filed herein notice, duly served, of the motion to be made this day; and came Samuel H. Stone, Charles Finley, and G. W. Long, by Richard Ernst, their attorney, and entered appearance to such motions, and also came the City of Frankfort and Franklin County and objected to the motions made in cases to which these defendants are parties, and, the court being advised, it is now ordered, adjudged, and decreed that the several defendants in the above-styled cases are enjoined and restrained as follows:

The defendants Stone, Finley, and Long are enjoined and
168 restrained from making or certifying any assessment against the complainants or any of them for the years 1895, 1896, 1897, and 1898 or any of them.

This order is only to stand until Saturday, June 4th, 1898, when the court will announce its decision on pending questions; to all of which defendants excepted.

(Signed) WM. H. TAFT,
Circuit Judge.

Said notice of motion filed herein on May 9th, 1898, is in words and figures as follows, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants. } Notice.

The defendants to the above-entitled bill of complaint will take notice that on Monday, May 9th, 1898, the complainant will move, before the Honorable W. H. Taft, circuit judge, at his chambers or court-room, in the Federal building, at Cincinnati, Ohio, about the hour of two p. m., to file herein an amended and supplemental bill of complaint and for an order of injunction or restraint against the defendants in accordance therewith.

Respectfully,

FARMERS' BANK OF KENTUCKY,
By W. S. PRYOR &
J. W. RODMAN, *Att'ys.*

Said notice is endorsed as follows, viz:

Executed by delivering to W. S. Dehoney, mayor of the city of Frankfort, Ky., and J. D. Moore, county judge of Franklin county, Ky., to each of them a true copy of the within notice. May the 6, 1898.

B. F. SUTER, *S. F. C.*,
By P. C. TOWLES, *D. S.*

Said amended and supplemental bill of complaint filed herein on May 9th, 1898, is in words and figures as follows, viz:

169 Circuit Court of the United States, Sixth Circuit, District of Kentucky.

FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants. } Amended and Supplemental Bill of Complaint.

The complainant, by way of amended and supplemental bill of complaint, would respectfully represent that the defendants Stone, Finley, and Long are now proposing to value the intangible prop-

erty and franchises of the complainant and to certify the same for the year 1898, exactly in the same way as they are alleged in the original bill of complaint to be about to value and certify for the years 1895, 1896, and 1897, and unless restrained by the court will make such valuation and certification, and the other defendants will endeavor to collect the tax thereon, just as is alleged in reference to the years specified in the original bill of complaint.

Your complainant makes the same allegations in reference to this vaouation and certification, to wit, for the year 1898, *and* it makes in its original bill of complaint in regard to the valuation and certification for the other years, and makes the same allegation in reference to the illegality thereof and of any effort on the part of the other defendants to collect taxes thereon as is made in reference to the said other years.

Wherefore the complain-t now amends its prayer in the original bill of complaint so as to include the year 1898, and prays as before and will ever pray.

Thomas Rodman says he is the president of the complainant; that the facts stated in the foregoing amended and supplemental bill of complaint are true so far as stated upon his personal knowledge, and are believed to be true so far as stated upon information.

THOMAS RODMAN.

Subscribed and sworn to before me this 6th day of May, 1898.

JAMES H. DORMAN, JR.,
Examiner for Franklin Co.

170 And on a day following, to wit, on the 25th day of June, 1898, the following entry was made herein, viz:

FARMERS' BANK OF KENTUCKY
vs.
SAMUEL H. STONE, Auditor, &c.

This day came the complainant, by its attorney, and filed a notice, duly executed, upon the defendant The County of Henderson, and by leave of court complainant is permitted to file its amended bill herein; which notice and amended bill are now filed.

(Signed) WM. H. TAFT,
Circuit Judge.

Said notice is in words and figures as follows, viz:

Circuit Court of the United States for the Sixth District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
versus
SAM'L H. STONE, &c., Defendants. } Notice.

The defendant The County of Henderson will take notice that on Saturday, the 25th day of June, 1898, at the Federal court-room in Cincinnati, Ohio, on or about the hour of 10 o'clock a. m. or when the court shall convene, the complainant will file in the above-

styled case an amended bill, in which it will set up and rely upon two judgments rendered by the Henderson circuit court on the 22nd day of October, 1895, in two injunction suits of The Farmers' Bank of Kentucky *vs.* The County of Henderson, &c., enjoining the collection of any county taxes against said bank for the years 1893 and 1894 as "*res judicata*" and as a bar to the collection or claim of the county of Henderson to collect any taxes for any purpose from said Farmers' bank.

The defendant is also notified that the complainant will file a certified copy — both of said records as exhibits in its amended bill.

THE FARMERS' BANK OF KENTUCKY,
By W. S. PRYOR &
J. W. RODMAN, *Att'ys.*

Said notice is endorsed as follows, viz:

171 Executed on Henderson county by delivering copy of this notice to E. C. Ward, county judge, and one copy to N. Powel Tayler, att'y for said county, this June 22, 1898.

W. G. DIXON, *S. H. C.*

Said amended bill filed herein on June 25th, 1898, is in words and figures as follows, viz:

Circuit Court of the United States for the Sixth Circuit of the State of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant, *versus* S. H. STONE, &c., Defendants.	Amended Bill in Equity.

To the judges of the circuit court of the United States for the circuit and sixth district of Kentucky:

The complainant, The Farmers' Bank of Kentucky, by leave of court for amendment to its original bill heretofore filed herein, states that the amount of the value of its capital stock as fixed by the board of valuation and assessment as of December 31st, 1892, was $1,163,919.27, of which there was apportioned by said board to the defendant, The County of Henderson, $359,000 for the year 1893, and for the year 1894 there was apportioned by said board of valuation and assessment to said county of Henderson $349,400; that this would be substantially the same valuation and apportionment for Henderson county as of December 31st, 1894, and the same as of December 31st, 1895, December 31st, 1896, and December 31st, 1897, for said county.

It states that the said board of valuation and assessment mentioned in the original bill, acting under the law of November 11th, 1892, having certified to the county of Henderson the amount of its proportion of the valuation of complainant's franchise, the defend-

ant The County of Henderson caused to be placed in the hands of Jno. E. Hickman, sheriff of said county and the collector of its revenue, the tax bill made out in accordance with the apportionment, as above set forth, for the year 1893, and the county of Henderson attempting to collect taxes thereon, the complainant, on the
172 16th day of October, 1893, filed in the circuit court of Henderson county, that being a court of general jurisdiction, its petition against The County of Henderson, the defendant herein, and Jno. E. Hickman, sheriff of Henderson county, in apt terms setting forth in the petition the contract between it and the State of Kentucky in regard to taxation under its original charter and under the Hewitt law, claiming the benefit of such contract, and claiming that no taxes could be collected from the complainant, except in pursuance thereof during its charter life, and claiming that the act of the legislature of November 11th, 1892, was unconstitutional and void as impairing the obligation of its contract, and praying the court to establish its contracts, and to enjoin the said county of Henderson and Jno. E. Hickman, sheriff, from attempting to collect any taxes contrary thereto. Afterwards, to wit, on the 22nd day of October, 1895, the summons having been duly served on the defendants on said petition, the court rendered the following judgment:

"At a September term, 1895, of the Henderson circuit court, to wit, Tuesday, October 22nd, 1895, the following order was entered herein: This action coming on to be heard, and it appearing that the court of appeals of Kentucky has rendered decision to the effect that during the corporate existence of plaintiff under its present charter the capital stock, undivided profits, and surplus and other property of said bank are not subject to municipal taxation or to taxation by any county of this Commonwealth, and that the county of Henderson sought to compel the plaintiff to pay taxes to it in the sum of five hundred and thirty-eight dollars & fifty cents, the payment of which was enjoined in this action filed October 16th, 1893, and the defendants declining to plead further, it is adjudged that defendants be enjoined and restrained from collecting from plaintiff said sum of $538.50, and from levying upon or selling the realty or any other property of plaintiff, and that the alleged tax and claim of said county is adjudged illegal and void, and that the said injunction be made perpetual, and that plaintiff recover from the defendants, The County of Henderson, the costs of this action, for which execution may be issued."

No appeal was ever taken from said judgment. A duly certified copy of the record in said case as it appears in the Henderson
173 circuit court is filed herewith as part hereof, marked "Exhibit M." Said exhibit contains the whole proceedings in said cause.

II.

The complainant further states that the said board of valuation and assessments, acting under said law of November 11th, 1892, having certified to the defendant The County of Henderson, as set forth in the above paragraph and in the original bill, the amount

of its proportion of the valuation of complainant's franchise of the year 1894, the defendant The County of Henderson caused to be placed in the hands of Jno. E. Hickman, sheriff of said county and the collector of its revenues, the tax bill made out in accordance with the apportionment for the said year of 1894, and the defendant The County of Henderson attempting to collect taxes thereon, the complainant, on the 1st day of December, 1894, filed in the Henderson circuit court, which is a court of general equity jurisdiction, its petition against the said county of Henderson and said Jno. E. Hickman, sheriff of Henderson county, setting forth its contract under its original charter and under the Hewitt law with the State, and relying upon the same, and setting forth the attempted violation thereof under the act of November 11th, 1892, and claiming that the act of the legislature — November 11th, 1892, was unconstitutional and void as impairing the obligation of its contract, and praying judgment against the defendant- The County of Henderson and the said Jno. E. Hickman, sheriff of Henderson county, that they be enjoined and restrained from collecting from the complainant any of said taxes; that the said alleged taxes be adjudged illegal and void and for all proper relief.

Complainant states that summons was duly issued on said petition and executed on the said defendants The County of Henderson and Jno. E. Hickman, sheriff, and afterwards, to wit, at a September term, 1895, of the Henderson circuit court, to wit, Tuesday, October 22nd, 1895, the following judgment was rendered in said case by said court:

"This action coming on to be heard, and it appearing that the court of appeals of Kentucky has rendered decision to the effect that during the corporate existence of plaintiff under its present charter
the capital stock, surplus, and undivided profits, and other
174 property of said bank is not subject to municipal taxation by
any county of the Commonwealth, and that the defendant The County of Henderson sought to compel plaintiff to pay taxes in the sum of $541.57, the payment of which was enjoined under plaintiff's above-styled action filed December 1st, 1894, and the defendants declining to plead further, it is adjudged that defendants be enjoined and restrained from collecting from plaintiff said sum of $541.47, and from levying upon or selling the realty and other property of plaintiff, and that the alleged tax and claim of said county is adjudged illegal and void, and that the said injunction be made perpetual, and that plaintiff recover from the defendant The County of Henderson the costs of this action, for which execution may be issued."

The complainant files herewith as part hereof a duly certified copy of the proceedings in said cause, being the full record of said case, and marked "Exhibit N."

III.

The premises considered, the complainant says that it has been decided in a proceeding between it and the defendant The County of Henderson that complainant's contract is valid and enforcible

and that the complainant can be subjected to no greater rate of taxation than that agreed to by it under the Hewitt law, and it prays that the said defendants Sam'l H. Stone, Charles Finley, and George W. Long be perpetually enjoined and restrained from assessing the value of complainant's capital stock or any of its property under the act of November 11th, 1892, for the years 1895, '6, or 1897 or any other year, and that the defendant Sam'l H. Stone be enjoined from certifying any such valuation to the said county of Henderson, and that the said county of Henderson be restrained from endeavoring to collect any tax upon any such valuation, and it prays as in its original bill.

W. S. PRYOR &
J. W. RODMAN,
Complainant's Solicitors.

STATE OF KENTUCKY, } *sct:*
Franklin County, }

Thomas Rodman says he is the president of The Farmers' Bank of Kentucky, the complainant; that the facts stated herein, so
175 far as stated from his personal knowledge, are true, and so far as stated from information — to be true.

THOMAS RODMAN.

Subscribed and sworn to before me by Thomas Rodman this 24th day of June, 1898.

W. G. CHAPMAN, *Clerk,*
By CHAS. N. WIARD, *D. C.*

"Exhibit N," filed with the foregoing supplemental bill, is in words and figures as follows, viz:

STATE OF KENTUCKY:

Pleas before Hon M. C. Givens, judge of the Henderson circuit court, at the court-house, in the city of Henderson, Kentucky, on Tuesday, October 22nd, 1895.

Style of suit.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
THE COUNTY OF HENDERSON and JNO. E. HICKMAN, Sheriff of Henderson County, Defendants. } Petition in Equity.

Be it remembered that on the 1st day of December, 1894, the plaintiff filed in the office of the clerk of the Henderson circuit court its petition, which is in words and figures as follows:

Petition.

The plaintiff, The Farmers' Bank of Kentucky, states that it is a banking corporation duly chartered by the General Assembly of the Commonwealth of Kentucky by an act entitled An act to in-

corporate the Farmers' Bank of Kentucky, approved February 16, 1850, and under its charter, which would have expired in the year 1880 but for the act extending it hereinafter mentioned, is possessed of general banking powers, among them those of having and conducting offices of loan and discount, to loan money, discount promissory notes and bills of exchange, and to deal in exchange; and soon after the granting of said charter it organized thereunder and has conducted its banking business ever since such organiza-
176 tion under said charter and under said act hereinafter mentioned, by which the term of charter was extended. At this time its principal office is located at and in the city of Frankfort, Ky., and its branches respectively in the city of Georgetown, Ky., and in the city of Henderson, Ky.; that section 15 of the act first mentioned prescribes that it shall "be the duty of the cashier of the principal bank on the first day of July, 1851, and on the first day of July in each succeeding year during the continuance of this charter to pay into the treasury of this Commonwealth fifty cents (50c.) on each one hundred dollars of stock held and paid for by said bank, which shall be in full of all tax or bonus; provided that no tax shall be paid until said bank goes into operation, and provided further that the tax or bonus hereby proposed to be imposed on such shares of stock in this bank or such as shall hereafter be imposed on each share is set apart and forever dedicated to the cause of education on the common-school system. And whenever the same or any part thereof shall be diverted otherwise — by legislative enactment, said bank shall be exonerated from the payment of any tax or bonus whatever."

Plaintiff says that the said contract and stipulation, as contained in the said charter, fixing the said rate of taxation conduced to the acceptance of said charter & to an organization under it by said bank, and to the maintenance of said bank and its branch banks.

That by an act entitled "An act extending the charter of the Farmers' Bank of Kentucky," approved on March 10th, 1876, the said legislature extended the aforesaid charter for the period of twenty-five years (25) from the time of the expiration of its said original charter in language as follows:

SECT. 1. "That the charter of the Farmers' Bank of Kentucky as amended be extended for the period of twenty-five years from the termination of its charter as therein fixed. Provided that said charter and amendments shall be subject to amendment or repeal by the General Assembly either by general or special act and
177 provided further that whilst the privileges and franchises so granted may be changed or repealed no amendment or repeal shall impair other rights previously vested." Said act is contained in the Acts of 1871, volume 1, page 324.

Plaintiff states that in pursuance to s'd provision relating to tax the plaintiff from the time of its first organization and ever since then to the date hereinafter mentioned has always paid and continued to pay to the State of Kentucky said tax on each one hundred dollars of the stock issued and paid for in said bank; that by a general statute passed by said legislature and approved on May

17, 1886, charter 92 of the General Statutes of Kentucky, article 2, section 4, commonly called "Hewitt law," it was provided that each of said banks, viz, (State and national banks) "by its proper corporate authority and the consent of the majority in interest of a quorum of its stockholders, at a regular or called meeting thereof," may give its consent to the levying of a tax of seventy-five cents (75c.) on each share thereof equal to one hundred dollars or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and that each corporation shall pay in addition upon each one hundred dollars or so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock the same rate of taxation that is assessed upon real estate, which shall be in full of all tax—State, county, and municipal—"and agree to pay same" and to waive and release all right under the acts of Congress or under the charter of the State banks to a different mode or smaller rate of taxation, which consent or agreement shall be endorsed by writing under the seal of said bank and delivered to the governor of the Commonwealth of Kentucky; and said section further provides that upon such agreement and consent being delivered and in consideration thereof such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of said bank.

Under the 7th section of the same article it is also provided that nothing in said act contained shall be construed as exempt-
178 ing from taxation for county or municipal purposes any real estate or building owned by said bank or corporation for conducting their business, but the same may be taxed for county or municipal purposes as other real estate is taxed; that in the 5th section thereof it is also provided that said bank may take the proceeding authorized by said 4th section of such act at any time until the meeting of the "next" General Assembly, provided they pay the tax aforementioned.

Now, plaintiff states that within the aforesaid time so fixed by said act for an acceptance of the propositions of the State of Kentucky, to wit, on the 6th day of December, in the year 1887, the said Farmers' Bank of Kentucky, by a majority in interest of a quorum of the stockholders of said bank, did consent and agree to and with the Commonwealth of Kentucky to the payment of the taxes proposed and provided for in aforesaid article 2, and in all other respects did comply with all the requirements of said act, and said bank did thereupon complete its acceptance of the proposed contract with the Commonwealth of Kentucky and delivered its written consent and agreement to the governor of the Commonwealth of Kentucky, as prescribed by the said act, and has always complied with the provisions of said contract from the inception of plaintiff's liability thereunder by paying to the State of Kentucky the above taxes on all the shares of stock and all taxable surplus and profits in the ratio and measure fixed by the act and contemplated by the said act and contract and by paying all the county and municipal taxes assessed against its real estate owned or used by said bank and

its branches in conducting its business until the — day of ——, 1893, and — day of ——, 1894, when it tendered to and offered to pay to State of Kentucky, viz., to its auditor of public accounts, whose duty it was to receive same for said State of Ky., all the taxes for which it was liable, and it refused to receive same.

Plaintiff says also and submits that under its contract with said State of Kentucky it is not liable for the payment of any greater or higher rate or other rate of tax or taxes, State, county,
179 or municipal, than that fixed under its said contract during the period of its existence as a corporation, and that its said contract with the State of Kentucky is in full force and is irrepealable during the corporate existence of the plaintiff corporation so long as said bank continues to observe the same, and that under such agreement said bank and the shares of stock therein and the property of said bank save and except its banking-houses are exempt from both county and municipal taxes. It states the legislature of the State of Kentucky by a late act, which became a law on November 11th, 1892, entitled "revenue and taxation," chapter 103, enacted in article 1, section 2, thereof that all real and personal estate within the State of Kentucky and all personal estate of persons residing within such State and of all corporations organized under the laws of this State, whether the property be in or out of this State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to taxation unless the same shall be exempt from taxation by the State constitution, and in the 3rd section thereof that the State of Kentucky and each county, incorporated city, or town and taxing district shall have a lien on all other property of each person or corporation owing the same for the taxes due by them respectively.

Plaintiff submits that if such act was intended by the said legislature to apply to and include this plaintiff or the shares of stock held therein or its property the same is in conflict with the aforesaid agreement made between this plaintiff and the State of Kentucky, and as to this plaintiff and said stock the last-mentioned act is inoperative and void during the corporate existence of said bank; and it further says and submits that the said act of November 11th, 1892, in so far as it conflicts with the aforementioned agreement to and with the State of Kentucky, impairs the obligation of the said contract and is unconstitutional and void, and that said legislation in relation to said contract is in conflict with the constitution of the State of Kentucky, and is also in conflict with the Constitution of the United States in that it impairs the obligation
180 of the contract.

Plaintiff further alleges and submits that if it should be held by the court that the said act of November 11th, 1892, operated as a repeal or abrogation of the said "Hewitt law" of 1886 and as a repudiation by the State of Kentucky of its said contract, however, in that event, the original charter of the plaintiff (under the act of 1850) is in full force and effect and the plaintiff is restored to all its vested rights under its original charter, among which is the exemp-

tion from any greater or other tax than is specifically designated by its said charter.

Plaintiff states that the defendant County of Henderson, in said State of Kentucky, and the defendant Jno. E. Hickman, who is the sheriff of said county, having in charge the collection and enforcement of taxes claimed by said county to be owing to it, now seek to subject and compel the plaintiff to pay certain taxes claimed by said county and said sheriff as owing by the plaintiff to said county to the amount of $541.57, and said sheriff has demanded from the plaintiff the said alleged tax of five hundred and forty-one $\frac{57}{100}$ dollars, which demand plaintiff has refused to comply with, and said sheriff has threatened to and does now threaten to levy upon and expose to sale and sell the property of the plaintiff, viz., certain valuable real estate belonging to the plaintiff in the city of Henderson, Ky., for the satisfaction of said alleged or pretended taxes, and unless restrained by law said defendant sheriff will proceed to enforce or carry out his said threat, and if the injunction hereinafter prayed for is not immediately granted great or irreparable injury will result to plaintiff.

Plaintiff states that no injunction about the matters herein contained has been refused by the court or any circuit judge. Wherefore plaintiff prays that the defendant- The County of Henderson and the sheriff of said county be enjoined and restrained from collecting from the plaintiff the said sum of $541 57 or any part thereof or any other tax or taxes and from levying upon or selling the real
181 estate of said plaintiff at Henderson, Ky., or any other property of plaintiff, and prays that the aforesaid alleged tax and claim of defendant The County of Henderson be adjudged illegal and void, for a restraining order against said defendants to prevent them from collecting said tax or enforcing same by sale of said property or otherwise, and that the injunction prayed for be made perpetual, and for all other relief to which it may be found entitled.

A. T. DUDLEY,
Att'y for Plaintiff.

Martin Schlamp, who is president of the plaintiff, Farmers' Bank of Kentucky, at its branch of said bank in Henderson, Ky., and its chief officer at such bank, says he believes the statements of the foregoing petition are true.

MARTIN SCHLAMP.

Sworn to before me by Martin Schlamp (president) on this 28th day of November, 1894.

A. T. DUDLEY, *N. P., H. C.*

There was filed with the foregoing petition the following notice:

The defendants County of Henderson and J. E. Hickman, sheriff of said county, are notified that said plaintiff in above action will on Monday, Dec. 3rd, 1894, between hours of 9 a. m. & 12 m., apply to the judge of the Henderson county court (the judge at Henderson circuit court being absent from Henderson county) for an order re-

straining the aforesaid defendants from collecting $541.57 and any other sum for taxes claimed as owing by plaintiff to said county of Henderson, and from levying upon, exposing to sale, or selling any of the real estate or other property of plaintiff.

Dec. 1, 1894.

FARMERS' BANK OF KENTUCKY,
By A. T. DUDLEY, *Att'y.*

I hereby accept service of above notice Dec. 1, 1894.

W. P. McCLAIN,
County Att'y.

182 Upon the filing of the foregoing petition summons and two copies were issued. Said summons is here copied as follows:

Summons.

No. 1121. Summons. Equity.

Commonwealth of Kentucky to the jailer of Henderson county, Greeting:

You are commanded to summon the County of Henderson and John E. Hickman, sheriff of Henderson county, to answer on the first day of the next Jan'y term of our Henderson circuit court a petition filed against them in said court by the Farmers' Bank of Kentucky, and warn them that upon failing to answer, the petition will be taken for confessed or they will be proceeded against for contempt, and you will make due return of this summons on the first day of the next Jan'y term of said court.

Witness S. A. Young, clerk of said court, this 1st day of December, 1894.

S. A. YOUNG, *Clerk,*
By J. R. LAMBERT, *D. C.*

The foregoing summons was returned to the office from whence it was issued with the following official end*p*rsement:

Return.

Executed by delivering to Jno. F. Lockett, judge of the Henderson county court, & John E. Hickman, sheriff of Henderson county, a true copy of this writ December 1st, 1894.

E. M. JOHNSON, *J. H. C.*

On 4 December, 1894, the plaintiff filed in the office of the clerk — the Henderson circuit court an order of injunction, which is here copied as follows:

Order of Injunction.

Hon. M. C. Givens, the judge of the Henderson circuit court, being now absent from Henderson county, Kentucky—

The clerk of the Henderson circuit court is ordered to issue an

order of injunction enjoining — restraining the County of Henderson and Jno. E. Hickman, sheriff of Henderson county, from collecting from the plaintiff, The Farmers' Bank of Kentucky, the sum of $541.57 or any part of said sum as a tax or taxes and
183 from levying upon any property of the plaintiff for taxes claimed by said county until the further order of this court or of the Henderson circuit court, upon the execution by the plaintiff of a bond, with good approved security, conditioned that the Farmers' Bank of Kentucky will pay to the defendant- such damages as they may sustain if it should be adjudged that the injunction ought not to have been granted.

Given under my hand, as judge of the Henderson county court, this 3rd day of December, 1894.

JNO. F. LOCKETT,
Judge Henderson County Court.

On December 4, 1894, the plaintiff filed in the office of the clerk of the Henderson circuit court its injunction bond as follows:

Bond.

Henderson Circuit Court, Term 187–.

FARMERS' BANK OF KENTUCKY, Plaintiff,
against
COUNTY OF HENDERSON, &c., Defendant-. } Bond.

We undertake that the plaintiff, The Farmers' Bank of Kentucky, shall pay to the defendant-, The County of Henderson & J. E. Hickman, S. H. C., the damages which they must sustain by reason of the injunction in this action if it is finally decided that said injunction ought not to have been granted.

This 4 day of December, 1894.

FARMERS' BANK OF KENTUCKY,
By A. T. DUDLEY, *Att'y.*
MARTIN SCHLAMP.

Attest: S. A. YOUNG, *C. H. C. C.*
By J. R. LAMBERT, *D. C.*

Upon the filing of the foregoing injunction bond injunction and two copies were issued. Said injunction is here copied as follows:

Injunction.

STATE OF KENTUCKY:

Henderson Circuit Court.

FARMERS' BANK OF KENTUCKY, Pl'ff,
vs.
THE COUNTY OF HENDERSON, Def'ts. } Injunction.

184 The Commonwealth of Kentucky to the County of Henderson and J. E. Hickman, sheriff of Henderson county, Greeting:

You are hereby enjoined and restrained from collecting from the plaintiff, The Farmers' Bank of Kentucky, the sum of $541.57 or any part of said sum as a tax or taxes and from levying upon any property of the plaintiff for taxes claimed by said county until the further order of the Henderson circuit court.

Given under my hand, as clerk of said court, this the 4th day of Dec., 1894.

S. A. YOUNG, *C. H. C. C.*

The foregoing injunction was returned to the office from whence it issued with the following official endorsement:

Return.

Executed by delivering to John F. Lockett, judge of the Henderson county court, and John E. Hickman, sheriff of Henderson county, each a true copy of this writ. December 6th, 1894.

E. M. JOHNSON, *J. H. C.*

At a September term, 1895, of the Henderson circuit court, to wit, Tuesday, October 22nd, 1895, the following order was entered herein:

Judgment.

This action coming on to be heard, and it appearing that the court of appeals of Kentucky has rendered decision to the effect that during the corporate existence of plaintiff under its present charter the capital stock, surplus, and undivided profits and other property of said bank is not subject to municipal taxation or taxation by any county of the Commonwealth, and that the defendant The County of Henderson sought to compel plaintiff to pay taxes in the sum of $541.57, the payment of which was enjoined under plaintiff's above-styled action, filed December 1, 1894, and the defendants declining to plead further, it is adjudged that defendants be enjoined and restrained from collecting from plaintiff said sum of $541.57 and from levying upon or selling the realty and other property of plaintiff, and that the alleged tax and claim of
185 said county is adjudged illegal and void, and that the said injunction be made perpetual, and that plaintiff recover from

the defendant The County of Henderson the costs of this action, for which execution may be issued.

Clerk's Certificate.

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, J. R. Lambert, clerk of the Henderson circuit court, same being a court of record in and for the State and county aforesaid, do hereby certify that the foregoing 20 pages, from 1 to 20, inclusive, this included, contain a true and complete transcript of all the records and proceedings in the case wherein The Farmers' Bank of Kentucky is the plaintiff and The County of Henderson and Jno. E. Hickman, sheriff of Henderson county (now ex-sheriff), are defendants, as found of record in my office, and directed to be copied by the attorneys of the Farmers' Bank of Kentucky.

Given under my hand, as clerk of said court, this the 16 day of June, 1898.

J. R. LAMBERT, *C. H. C. C.*

Judge's Certificate.

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, J. L. Dorsey, judge of the circuit court in and for the county of Henderson, State of Kentucky, do hereby certify that J. R. Lambert, whose genuine signature appears above, is the duly elected, qualified, and acting clerk of Henderson circuit court; that his certificate is in due form of law, and his official acts are entitled to full faith and credit.

Given under my hand, as judge of said court, this the 16 day of June, 1898.

J. L. DORSEY, *Judge.*

STATE OF KENTUCKY, *Henderson County,* } *sct:*

I, J. R. Lambert, clerk of the Henderson circuit court, same being a court of record in and for the State and county aforesaid,
186 do hereby certify that J. L. Dorsey, whose genuine signature appears above, is the duly elected, qualified, and acting judge of the Henderson circuit court, and that his official acts are entitled to full faith and credit.

Given under my hand and seal of office this the 16 day of June, 1898.

[SEAL.] J. R. LAMBERT, *C. H. C. C.*

Clerk's fee for this transcript.....	$5.50
Seal.....	.50
	$6.00

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"Exhibit M," filed with said supplemental bill on June 25th, 1898, is in words and figures as follows, viz:

STATE OF KENTUCKY:

Pleas before Hon. M. C. Givens, judge of the Henderson circuit court, at the court-house, in the city of Henderson, Kentucky, on Tuesday, October 22nd 1895.

THE FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
COUNTY OF HENDERSON and JNO. E. HICKMAN, Sheriff of Henderson County, Def'ts. } Petition in Equity.

187 Style of suit.

Be it remembered that on the 16th day of October, 1893, the plaintiff filed in the office of the clerk of the Henderson circuit court its petition, which is in words and figures as follows:

The plaintiff, The Farmers' Bank of Kentucky, states that it is a banking corporation duly chartered by the General Assembly of the Commonwealth of Kentucky by an act entitled An act to incorporate the Farmers' Bank of Kentucky, approved February 16, 1850, and under its charter, which would have expired in the year 1880 but for the act extending it hereinafter mentioned, is possessed of general banking powers, among them those of loan and discount, to loan money, discount promissory notes and bills of exchange, and deal in exchange, and soon after the granting of its said charter it organized thereunder and has conducted its banking business ever since such organization under said charter and under the act hereinafter mentioned by which the term of such charter was extended.

At this time its principal office is located at the city of Frankfort, Ky., and its branches respectively in the city of Georgetown, Ky., and in the city of Henderson, Ky.; that section fifteen (15) of the act first mentioned prescribes that "it shall be the duty of the cashier of the principal bank, on the 1st day of July, 1851, and on the first day of July in each succeeding year during the continu-

ance of this charter, to pay into the treasury of this Commonwealth fifty cents on each hundred dollars of stock held and paid for by said bank, which shall be in full of all tax or bonus. Provided that no tax shall be paid until said bank goes into operation; and provided further, that the tax or bonus hereby proposed to be imposed on such shares of stock in this bank, or such as shall hereafter be imposed on each share is set apart and forever dedicated to the cause of education, on the common-school system, and whenever the same or any part thereof shall be diverted otherwise — by legislative enactment, said bank shall be exhonerated from the payment of any tax or bonus whatever." Plaintiff says that said contract and stipulation, as contained in the said charter fixing the said rate of taxation, conduced to the acceptance of said
188 charter, and to an organization under it by said bank and to the maintenance of said bank and its branch banks.

That by an act entitled "An act extending the charter of the Farmers' Bank of Kentucky," approved on March 10th, 1876, the said legislature extended the aforesaid charter for the period of twenty-five years from the time of the expiration of its said original charter in language as follows:

"SEC. 1. That the charter of the Farmers' Bank of Kentucky as amended be extended for the period of twenty five years from the termination of its charter as therein fixed. Provided that said charter and amendments shall be subject to amendment or repeal by the General Assembly, either by general or special act, and provided further that whilst the privileges and franchises, so granted, may be changed or repealed no amendment or repeal shall impair other rights previously vested."

Said act is contained in the act of 1871, volume 1, page 324.

Plaintiff states that in pursuance *to* said provision relating to tax, the plaintiff, from the time of its first organization and ever since then to the date hereinafter mentioned, has always paid and continued to pay to the State of Kentucky said tax on each one hundred dollars of the stock issued and paid for in said bank.

That by a general statute passed by the said legislature and approved on May 17, 1886, charter 92 of the General Statutes of Kentucky, article 2, section 4, commonly called the "Hewitt law," it was provided that each of said banks, (viz., State and national banks) "by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof," may give its consent to the levying of a tax of seventy-five — (75c.) on each share thereof, equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and that such corporations shall pay in addition, upon each one hundred dollars or so much of their surplus undivided surplus, undivided profits, or undivided accumulations, as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon
189 real estate, which shall be in full of all tax, State, county, and municipal, "agree to pay same" and to waive and release all right under the acts of Congress, or under the charter of the

State banks to a different mode or smaller rate of taxation, which consent or agreement shall be evidenced by writing under the seal of said bank and delivered to the governor of the Commonwealth of Kentucky; and said section further provides that upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of said bank.

Under the 7th section of the same article it is also provided that nothing in said act contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned or used by said banks or corporations for conducting their business, but that the same may be taxed for county or municipal purposes as other real estate is taxed.

That in the 5th section thereof it is also provided that said banks may take the proceeding authorized by said 4th section of such act at any time until the meeting of the next General Assembly, provided they pay the tax aforementioned.

Now, plaintiff states that within the aforesaid time so fixed by said act for an acceptance of the proposition of the State of Kentucky, to wit, on the 6th day of December, in year 1887, the said Farmers' Bank of Kentucky by a majority in interest of a quorum of the stockholders of said bank, did consent and agree to and with the Commonwealth of Kentucky to the payment of the taxes proposed and provided for in aforesaid article 2, and in all other respects did comply with all the requirements of said act, and said bank thereupon did complete its acceptance of the proposed contract with the Commonwealth of Kentucky, and delivered its written consent and agreement to the governor of the Commonwealth of Kentucky, as provided by the said act, and has always complied with the provisions of said contract from the inception of plaintiff's liability thereunder, by paying to the State of Kentucky the above
190 taxes on all the shares of stock and all taxable surplus and profits in the ratio fixed by the act and contemplated by the said act and contract, and by paying all the county and municipal taxes assessed against its real estate owned or used by said bank and its branches in conducting its business until the — day of ——, 1893, when it tendered and offered to pay to said State all the taxes for which it was liable for that year at said rate of 75 cents per share and at the contract rate on the surplus and undivided profits, the same being the only remaining unpaid tax, and the State of Kentucky, by its auditor of public accounts, whose duty it was to receive same, refused to accept such payment.

Plaintiff says and submits under its said contract with said State of Kentucky it is not liable to the payment of any greater or higher rate, or other rate of tax or taxes, State, county, or municipal, than that fixed under its said contract during the period of its existence as a corporation, and that its said contract with the State of Kentucky is in full force and is irrepealable during the corporate existence of plaintiff, so long as said bank continues to observe the same, and that also under such agreement said bank and the shares of stock

therein and the property of said bank, save and except its banking-houses, are exempt from both county and municipal taxes. It states the legislature of the State of Kentucky by a late act, which became a law on November 11th, 1892, entitled "Revenue and taxation," chapter 103, enacted in article 1, section 2, thereof, that all real and personal estate within the State of Kentucky, and all personal estate of persons residing within such State, and of all corporations organized under the laws of this State, whether the property be in or out of this State, including intangible property, which shall be considered and estimated in fixing the value of corporate franchises, shall be subject to taxation, unless the same shall be exempt from taxation by the State constitution; and in the 3rd section thereof, that the State of Kentucky, and each county, incorporated city, or
191 town, and taxing district, shall have a lien on all other property of each person or corporation owning the same for the tax due by them respectively. Plaintiff submits that if such act was intended by the said legislature to apply to and include this plaintiff, or the shares of stock held therein, or its property, the same is in conflict with the aforesaid agreement made between this plaintiff and the State of Kentucky; and as to the said plaintiff and said stock, the last-mentioned act is inoperative and void during the existence of said bank.

And it *is* further submits that the said act of November 11th 1892, in so far as it conflicts with the aforementioned agreement, impairs the obligation of the said contract, is unconstitutional and void.

Plaintiff further alleges and submits that if it should be held by the court that the act of Nov. 11th, 1892, operated as a repeal or abrogation of the said "Hewitt law" of 1886, and as a repudiation by the State of Kentucky of its said contract, then the original charter of the plaintiff (under the act of 1850) is in full force and effect, and the plaintiff is restored to all its vested rights under its original charter, among which is its exemption from any greater or other tax than is specifically designated by its said charter.

Plaintiff states that the defendant The County of Henderson, in said State of Kentucky, and the defendant Jno. E. Hickman, the sheriff of said county (having in charge the collection and enforcement of taxes claimed by said county to be owing to it), now seek to subject the plaintiff to the payment of certain taxes claimed by said county and said sheriff as owing by the plaintiff to the amount of $538.50, and that the said sheriff has demanded from plaintiff the said alleged tax of five hundred and thirty-eight $\frac{50}{100}$ dollars, which demand plaintiff has refused to comply with, and said sheriff has threatened to and does now threaten to promptly levy upon and expose to sale and sell the banking-house of said plaintiff at Henderson, Ky., or other of its property, for the satisfaction of said alleged pretended taxes, and unless restrained by law the said sheriff will proceed to carry out its said threat, and if the injunction hereinafter prayed for is not immediately granted great or
192 irreparable injury will result to this plaintiff, and that no injunction about the matter herein has been refused by the

court or any circuit judge. Wherefore plaintiff prays that the defendants, The County of Henderson and the sheriff of said county, be enjoined and restrained from collecting from the plaintiff the said sum of $538.50 or any part thereof, or any other tax or taxes, and from levying upon or selling the banking-house of said plaintiff at Henderson, Ky., or any other property of plaintiff, and prays that said alleged tax and claim of defendant be adjudged illegal and void, and for all other relief to which it may be found entitled.

MONTGOMERY MERRITT AND
A. T. DUDLEY, *Atty's for Plaintiff.*

A. T. Dudley, one of the attorneys for the plaintiff, says the president and principal officer of the plaintiff is Thomas Rodman, who is now absent from Henderson county, Ky., and affiant says he believes the statements of the foregoing petition are true.

A. T. DUDLEY.

Sworn to before me by A. T. Dudley this 13 day of October, 1893.

S. A. YOUNG, *C. H. C. C.*,
By J. R. LAMBERT, *D. C.*

At a September term, 1893, of the Henderson circuit court, to wit, Monday, October 16th, 1893, the following order was entered herein:

The plaintiff filed its petition and its motion, the same is now docketed, and moved the court to grant it an injunction as prayed for in the petition; said motion was for time continued. The defendant J. E. Hickman, sheriff of Henderson county, appeared in open court, entered his appearance herein, and waived notice.

On November 8, 1893, the judge of the Henderson county court granted a temporary order of injunction, which is here copied, as follows:

Hon. M. C. Givens, judge of the Henderson circuit court, being now absent from Henderson county, the clerk of the Henderson circuit court is hereby ordered to issue an injunction enjoining and restraining the county of Henderson and Jno. E. Hickman,
193 sheriff of Henderson county, from collecting from the plaintiff any taxes, and from levying upon any property of the plaintiff for taxes, until the further order of this court, upon the execution by plaintiff of a bond with good security conditioned that said Farmers' Bank of Kentucky will pay to the defendant such damages as they may sustain if it should be adjudged that the injunction ought not to have been granted.

Given under my hand, as judge of the Henderson county court, this November 8th, 1893.

JNO. F. LOCKETT, *P. J., H. C.*

At a subsequent January term, 1894, of said court, to wit, Wednesday, January 10th, 1894, the following order was entered herein:

Came this day the plaintiff, The Farmers' Bank of Kentucky, and made application to the court for a temporary injunction, enjoining and restraining the County of Henderson and Jno. E. Hickman, sheriff thereof, from collecting, enforcing the collection of, and levying the taxes and personalty set forth in the petition upon the property of plaintiff therefor, which application and motion is granted, and the plaintiff thereupon in open court executed bond, with Martin Schlamp surety, approved by the court and to the effect that the plaintiff shall pay to defendant- the damages which they may sustain by reason of the injunction in this action if it is finally decided that said injunction ought not to have been granted, and the clerk of this court is directed to issue the injunction, as prayed for in plaintiff's petition.

The bond referred to in the foregoing order is in words and figures as follows:

Henderson Circuit Court, —— Term, 187–.

FARMERS' BANK OF KY., Plaintiff,
against
COUNTY OF HENDERSON, &c., Defendants. } Bond.

We undertake that the plaintiff, Farmers' Bank of Kentucky, shall pay to the defendant-, The County of Henderson and J. E. Hickman, the damages which they may sustain by reason of the injunction in this action if it is finally decided that said
194 injunction ought not to have been granted.

FARMERS' BANK OF KY.,
By A. T. DUDLEY, *Att'y Pl'ff.*
MARTIN SCHLAMP.

This — day of ——, 187–.

Attest: —— ——, *C. H. C. C.*

No injunction appears to have been issued, as shown by the steps on the papers.

On March 10, 1894, there was issued a summons and two copies on the foregoing petition. The steps show that the summons was executed in full on March 12th, 1894, by B. M. Sandefur, the then coroner of Henderson Co., but the said summons, with the return thereon, has been lost or mislaid and is not now in the papers.

At a subsequent September term, 1895, of said court, to wit, Tuesday, Oct. 22, 1895, the following order was entered herein:

This action coming on to be heard, and it appearing that the court of appeals of Kentucky has rendered a decision to the effect that during the corporate existence of plaintiff under its present charter the capital stock, undivided profits, and surplus and other property of said bank are not subject to municipal taxation or to taxation by any county of this Commonwealth, and that the County of Henderson sought to compel the plaintiff to pay taxes to it in the sum of five hundred and thirty-eight dollars and 50 cents, the payment of which was enjoined in this action filed October 16, 1893, and de-

fendants declining to plead further, it is adjudged that defendants be enjoined and restrained from collecting from plaintiff said sum of $538.50 and from levying upon or selling the realty or any other property of plaintiff, and that the alleged tax and claim of said county *is* adjudged illegal and void, and that the said injunction be made perpetual, and that plaintiff recover from the defendant The County of Henderson the costs of this action, for which execution may be issued.

195 STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, J. R. Lambert, clerk of the Henderson circuit court, same being a court of record, in and for the State and county aforesaid, do hereby certify that the foregoing 17 pages, from 1 to 17, inclusive, this included, contain a true and complete transcript of all the records and proceedings in the case wherein The Farmers' Bank of Kentucky is plaintiff and The County of Henderson and John E. Hickman, sheriff of Henderson county (now ex-sheriff) are defendants, as found of record in my office and directed to be copied by the attorneys of the Farmers' Bank of Kentucky.

Given under my hand, as clerk of said court, this the 16th day of June, 1898.

J. R. LAMBERT, *C. H. C. C.*

STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, J. L. Dorsey, judge of the circuit court in and for the county of Henderson, State of Kentucky, do hereby certify that J. R. Lambert, whose genuine signature appears above, *is* the duly elected, qualified, and acting clerk of Henderson circuit court; that his certificate is in due form of law, and his official acts are entitled to full faith and credit.

Given under my hand, as judge of said court, this the 16 day of June, 1898.

J. L. DORSEY, *Judge.*

STATE OF KENTUCKY, }
Henderson County, } *sct:*

I, J. R. Lambert, clerk of the Henderson circuit court, same being a court of record, in and for the State and county aforesaid, do hereby certify that J. L Dorsey, whose genuine signature appears above, is the duly elected, qualified, and acting judge of the Henderson circuit court, and that his official acts are entitled to full faith and credit.

Given under my hand and seal of office this the 16 day of
196 June, 1898.

[SEAL.] J. R. LAMBERT, *C. H. C. C.*

Clerk's fee for this transcript	$4.75
Seal	.50
	$5.25

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On a day following, to wit, on the 25th day of June, 1898, the following entry was made herein, viz:

FARMERS' BANK OF KENTUCKY
vs.
SAMUEL H. STONE ET AL.

The court, being advised, filed its opinion herein.

It is therefore adjudged, ordered, and decreed as follows:

1st. The demurrer of the defendant The Board of Councilmen of the City of Frankfort to the bill of complaint is hereby overruled, to which the Board of Councilmen and the City of Frankfort except, and the demurrer of the defendants Samuel H. Stone, G. W. Long, and Charles Finley is overruled, to which they except.

2nd. The demurrer of the County of Franklin to the bill of complaint is overruled; to which the defendant excepts.

3rd. The demurrer of the City of Henderson to the bill of complaint is overruled; to which the defendant excepts.

4th. The demurrer of the County of Henderson to the bill
197 of complaint is overruled; to which defendant excepts.

5th. The plea of the Board of Councilmen of the City of Frankfort and the County of Franklin and the City of Henderson and the County of Henderson to the bill of complaint is overruled; to which the said defendants except.

6th. Thereupon came the complainant, by W. S. Pryor and J. W. Rodman, and filed herein replications to the answers of the Board of Councilmen of the City of Frankfort and the County of Franklin and the city of Henderson and the County of Henderson. The defendants The County of Franklin and The City of Frankfort offered to file an amended answer, to which complainant objected, and a motion to file is overruled, to which defendants except, and the said amended answer is made a part of the record by this order; and by consent of the Board of Councilmen of the City of Frankfort and the County of Franklin and the City of Henderson and the County of Henderson and defendants S. H. Stone, Charles Finley, and G. W. Long this cause came on to be heard for final decree. The complainant read upon the hearing its bill of complaint and

its two amended bills of complaint herein and the several exhibits filed herein, namely:

Exhibit "A," being the record of the proceedings in the case of The Farmers' Bank of Kentucky against The County of Franklin, &c.

Exhibit "B," being the record of the proceedings in the case of The Farmers' Bank of Kentucky against The Board of Councilmen of the City of Frankfort.

Exhibit "C," being the resolution of the stockholders.

Exhibit "D," being the record of the proceedings in the court of appeals in the case of the complainant against the County of Franklin.

Exhibit "E," being the judgment of the Franklin circuit court.

Exhibit "F," being the record in the court of appeals in the case of the complainant against the Board of Councilmen of the City of Frankfort.

Exhibit "G," being the judgment of the Franklin circuit court.

Exhibit "H," being the record of the complainant against
198 the City of Henderson in the Kentucky court of appeals.

Exhibit "K," being judgment of the Henderson circuit court.

Also Exhibit "M," it being a copy of the record in the case of the complainant against the County of Henderson, &c., in the Henderson circuit court, including the judgment of said court.

Also Exhibit "N," it being a copy of the record in the case of the complainant against the County of Henderson, in the Henderson circuit court, including the judgment of said court.

The defendant-The Board of Councilmen of the City of Frankfort, The County of Franklin, The City of Henderson, and The County of Henderson read on the hearing their respective answers, and the City of Frankfort read on the hearing the record of the proceedings in the case of The Board of Councilmen of the City of Frankfort against L. C. Norman, &c., being called in the record Exhibit —.

And it is now adjudged, ordered, and decreed that the defendants Samuel H. Stone, Charles Finley, and G. W. Long be, and they are hereby, perpetually enjoined and restrained from certifying the value of the franchise of the complainant under the act of November 11th, 1892, for the years 1895, 1896, 1897, and 1898 and for any subsequent years during the corporate existence of the complainant, and are enjoined and restrained from certifying such value to the county clerk of Franklin county and the county clerk of Henderson county or to any officer of the Board of Councilmen of the City of Frankfort or of the City of Henderson or of the County of Franklin or the County of Henderson; and the defendants The Board of Councilmen of the City of Frankfort, County of Franklin, The City of Henderson, and The County of Henderson are enjoined and restrained from endeavoring to collect any tax upon any such valuation, and the complainant by making payment in accordance with the Hewitt law is discharged in full from all tax to be exacted from it under any form or by any authority.

It is further adjudged, ordered, and decreed that by reason of the

several pleas of *res judicata* relied on by complainant in its bill and amended bills and as shown by the exhibits therewith the
199 complainant has established a contract with the Commonwealth of Kentucky under the provisions of article 2 of the act of the General Assembly of the State of Kentucky entitled "An act to amend the revenue laws of Commonwealth of Kentucky," approved May 17th, 1896, and the acceptance of the same by the complainant, the terms of which contract the Commonwealth cannot alter or change without the consent of the complainant; that by the terms of this contract the complainant and its shares of stock cannot, during its corporate existence, be assessed for taxation for State purposes in a different mode or at a greater rate of taxation than as prescribed in said act and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of Commonwealth of Kentucky and the act of November 11th, 1892, in so far as they are intended to provide for any assessment or taxation of the complainant's property, rights of property or franchise, or shares of stock, except to the extent and in the manner provided by section- one, two, and three of article two of the said act approved May 17th, 1886, and except to assess and tax for county and municipal purposes upon its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; and it is further adjudged that the complainant recover of the defendants The Board of Councilmen of the City of Frankfort, The County of Franklin, and The City of Henderson and The County of Henderson its costs in this action expended; and the court further finds that there is no irrevocable contract established, by judgment or otherwise, binding the county of Scott or the city of Georgetown to a compliance with the Hewitt act in respect to the collection of taxes upon the property or stock of the Farmers' Bank of Kentucky taxable therein, and therefore that as to such property and as to so much of the said stock as is apportioned for taxation to Scott county or the city of Georgetown under the revenue act of 1892 said act applies and is in force, and the Hewitt act has no application thereto. Wherefore it is adjudged that as to the county of Scott and the city of Georgetown the
200 *com-* plaintiff's bill be, and the same is hereby, dismissed, to which the complainant excepts. The question raised by the complainant under the State decisions, whether prior decisions of the court of appeals, though now overruled, prevent the collection of taxes accruing during those years, when the prior decisions holding them uncollectable and void remain unreversed, is neither considered nor decided.

And came defendants The Board of Councilmen of the City of Frankfort, County of Franklin, City of Henderson, and County of Henderson and prayed an appeal in open court and tendered their assignment of errors; whereupon the court allowed the appeal and orders the assignment of errors to be filed and fixes the appeal bond herein at $1,000.

And came the complainant and prayed an appeal in open court

from the order dismissing its bill as to the city of Georgetown and the county of Scott, and tendered its assignment of errors; whereupon the court allowed the appeal and ordered the assignment of errors to be filed and fixes the appeal bond herein at $1,000.

(Signed) WM. H. TAFT,
Circuit Judge.

Said opinion filed herein on June 25th, 1898, is in words and figures as follows, viz:

201 Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF Kentucky, Complainant,
vs.
SAMUEL H. STONE, CHARLES FINLEY, G. W. LONG, CITY of Louisville, County of Franklin, and The Board of Councilmen of the City of Frankfort, Defendants. } No. 6555.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

This is a bill in equity filed by the Bank of Kentucky, a corporation organized under the laws of Kentucky, to restrain the assessment and collection of certain taxes for the benefit of the defendants The City of Louisville, The County of Franklin and The City of Frankfort. Samuel H. Stone is the auditor of public accounts for the State of Kentucky, Charles Finley is the secretary of state, and George W. Long, is the State treasurer; and these three officers, also made defendants herein, constitute the State board of valuation and assessment. The bill avers that the complainant has an irrevocable contract with the State of Kentucky, by which taxes are limited to a certain amount per share upon its stock, and the usual local taxes on its real estate, but that the revenue act of the legislature of Kentucky passed November 11, 1892, impairs that contract and is in violation of the Constitution of the United States.

The case made by the bill is as follows:

The complainant was created a body politic and corporate by an act of the General Assembly of Kentucky approved February 2, 1834. The term of its corporate existence was fixed at thirty years from the date of its incorporation. It was authorized to do a banking business and to issue bank notes; it was directed to keep its principal office of discount and deposit in the city of Louisville and to locate a branch at Frankfort, the seat of the government, to aid and manage the fiscal affairs of the State. The State was
202 given a voice in the control of the bank by a provision that the government of the Commonwealth should appoint three of the bank's directors.

By the fifteenth section of the original charter, it was provided that the bank should pay to the treasurer of the Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank, which should be in full of all tax and bonu

provided that the legislature might increase or diminish the same; but that at no time should the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank. By an act of February 12, 1836, the tax was increased to 50 cents a share. By the act of February 15, 1858, it was provided that the charter privileges of the complainant should continue in full force for twenty years from October 1, 1864, but this extension was declared to be granted on certain conditions. The extension was duly accepted by complainants.

On March 18, 1886, an act called the Hewitt act was passed to make taxation equal and uniform. It provided that all State and national banks should pay into the State treasury seventy-five cents on each share of their capital stock and should in addition, pay into said treasury on their surplus, undivided profits and accumulations in excess of 10 per cent. of their capital stock, a tax at the same rate as that assessed on real property; and that the said taxation should be in full of all tax—State, county and municipal—except that the real estate and buildings, owned and used by the banks in conducting their business should not be exempted from taxation for municipal or county purposes; and that such real estate alone might be taxed for county and municipal purposes, as other real estate was taxed.

The fourth section of the act provided that each of the banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders at a regular or called meeting thereof, might give its consent to the levying of said tax, and agree to pay the same and waive and release all right under the act of Congress or under the charters of the State banks, to a different mode or a smaller rate of taxation, which consent and agreement to and with the State of Kentucky should be evidenced by writing, under the seal of said bank, and delivered to the governor of the Commonwealth before the next meeting of the legislature; and said agreement and consent being delivered and in consideration thereof, such bank and its
203 shares of stock should be exempt from all other taxation whatsoever, so long as said taxation should be paid, during the corporate existence of the bank.

On June 25, 1887, within the proper time, at a stockholders' meeting by a vote of the stockholders, the complainants gave their consent to the levying of said tax, and to the waiver and release of all right under their charter to a different mode and a lower rate of taxation, and this consent was duly certified by the governor of the Commonwealth. Since 1887 the complainants have paid this tax under the so-called Hewitt act.

On November 11, 1892, the legislature of Kentucky, under a constitution adopted in 1891, passed an act dealing with the assessment of certain corporations, among others, banks. The act provided that every incorporated bank should, in addition to other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town or taxing district where its franchise might be exercised. The

auditor, treasurer and secretary of state are by said act constituted a board of valuation and assessment for fixing the value of said franchise. The board is required to apportion the value of the franchise among the several taxing jurisdictions entitled to a share of such tax, and for such apportionment the auditor of State is required, at the expiration of thirty days, to certify to the county clerks of the counties where any portion of the corporate franchise of such banks shall be liable to local taxation the amount thereof liable for county or State taxes; and the county clerk is required to certify the same to the collecting officer of the county and city for collection. If a bank fails to pay its taxes, penalties and interest after thirty days' notice, it is to be deemed guilty of a misdemeanor and upon conviction is to be fined $50 for each day during which the tax remains unpaid—to be recovered by indictment or by civil action—of which the Franklin circuit court shall have jurisdiction. The bill avers that the amount of tax which the complainant would have to pay to the board of valuation and assessment over and above what it has to pay under the Hewitt law would be more than $20,000 per annum.

The complainant avers that the defendants are conclusively estopped by previous litigation to contend in this suit that the complainant has not an irrevocable contract with the State limiting its taxes to those fixed in the Hewitt act; that on February 28, 1894,
the complainant filed in the circuit court of Franklin county,
204 that being a court of general jurisdiction, its petition against
the county court of Franklin and R. D. Armstrong, sheriff of said county, setting forth the contracts between complainant and the State in regard to taxes under its original charter, and under the Hewitt law, claiming that no taxes could be collected from the complainant except under the Hewitt law during its charter life, and further that the act of the legislature of November 11, 1892, was unconstitutional and void as impairing the obligation of its contracts aforesaid; that the prayer of the petition was that the court should establish the contracts and should enjoin Franklin county and Armstrong, its sheriff, from attempting to collect any taxes contrary to said contracts; that a decree was entered upon this petition in the Franklin circuit court, adjudging that the act of November 11, 1892, did not violate any contract between the complainant and the State, and the petition for injunction was denied; that the complainant thereupon appealed from the decree to the court of appeals of Kentucky, which court reversed the judgment of the lower court and remanded it to the circuit court of Franklin county for judgment in conformity to its opinion; that the circuit court entered the following judgment on January 21, 1896, which is still in full force and effect:

"This day came the parties by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals heretofore filed, reversing the former judgment of this court, and the court being now sufficiently advised, it is adjudged that article 2 of the act of

the General Assembly, entitled 'An act to amend the revenue laws of the Commonwealth of Kentucky,' approved May 17, 1886 (General Statutes, chapter 92, article 2), and the acceptance of the provision thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth, which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as prescribed in the said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of this State and the act of November 11, 1892 (article 3, chapter 103, Acts 1891–'2–'3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property or franchise, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; that the board of valuation and assessment provided for in said act of November 11, 1892, had and
205 has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same, or any part of the same, for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be, and the same is now, made perpetual, and the defendants, Franklin County and R. D. Armstrong, sheriff of said county, be, and each of them *are*, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff, or in any manner collecting from the plaintiff any taxes for the purposes of Franklin county upon the franchise or property of the plaintiff, except taxes upon its real estate in conducting its business. And it is further adjudged that the plaintiff recover of the defendant its costs in this action expended;"

that a similar suit was filed in the same court by the complainant against the Board of Councilmen of the City of Frankfort to enjoin it from attempting to collect municipal taxes on the apportioned valuation of the franchise certified to the city by the board of valuation and assessment, setting forth exactly the same objection to the validity of the tax; that the court entered a decree for the defendants, and an appeal was taken to the court of appeals, which reversed the decree of the circuit court and directed that a new decree be entered in conformity with the opinion transmitted; that thereupon the Franklin circuit court entered a judgment enjoining the City of Frankfort in exactly the same terms as that already set forth above in the case against the county court of Franklin; that in February, 1894, the city of Louisville, claiming to act under authority given it by an act of the Kentucky legislature affecting the government of cities of the first class, of which the city of Louisville was the only one, passed an ordinance requiring the

banks of the city of Louisville to pay to the city an annual tax of 4 per cent. upon their annual gross earnings; that the complainant failed to pay the tax and thereupon, under the act referred to, a warrant was sued out in a criminal prosecution against the complainant in the city court of Louisville; that the complainant then, in the manner provided by law, filed its petition in the Jefferson circuit court for a writ of prohibition against R. H. Thompson, judge of the police court of the city of Louisville, setting out in apt terms its incorporation, its original charter, the extensions thereof, the passage of the Hewitt law, the contract entered into in conformity therewith, and claiming the benefit of its said contractual relations with the State; that the petition alleged that the said ordinance of the city of Louisville was void because impairing the obligation of the complainant's con-
206 tract, and any authority given to the city of Louisville to pass such ordinance was likewise void for the same reason, and prayed that the judge might be prohibited from taking jurisdiction of the proceeding against the complainant for a violation of the ordinance; that issue was joined on this petition by the defendant, The Judge of the Police Court of the City of Louisville; that the city of Louisville, though not a party in name, in that court, was, in reality, the party defendant and appeared by counsel; that the court found the issues in favor of the complainant, entered a judgment accordingly, and, thereupon, the defendant, The City of Louisville, caused an appeal to be taken in its name from the judgment to the court of appeals of Kentucky, in which court the cause was argued by counsel for the city of Louisville and for the Commonwealth of Kentucky; that the court of appeals affirmed the judgment of the Jefferson county circuit court, and sent a mandate of affirmance to the court of original jurisdiction, where it was duly entered; that the averment of the petition in that case upon which issue was joined and which presented the only point for adjudication was as follows:

"The plaintiff states that the said act granting a charter to cities of the first class, and the said ordinance passed in pursuance thereof, are both unconstitutional and void, in that they impair the obligation of the contract between the plaintiff and the Commonwealth of Kentucky, as embodied in its charter as aforesaid, and as embodied in its agreement as aforesaid, made under the revenue law of May 17, 1886, and are a violation of the Constitution of the United States, and especially the section thereof, providing that no State shall pass any law impairing the obligation of a contract.

The plaintiff avers and submits that the said act chartering cities of the first class, and the said ordinance as aforesaid, are both unconstitutional and void, as above set forth; that the granting and acceptance of its charter, and the several acts extending and continuing the same, which were accepted and acted upon by said bank, constituted a contract between the State on the one part and the bank and its stockholders on the other part, continuing during the legal existence of the corporation and the State, never had, and has not now, the right to repeal or annul said agreement or the

rights conferred by said charter, limiting the right of the State to impose a tax on said bank without the consent of said bank.

The plaintiff further states that it did give its consent to said act of May 17, 1886, and did, upon the considerations therein recited, waive and release its right under its charter to a different mode or a smaller rate of taxation than is therein provided. Said consent and waiver was made on the belief that the said act was in-
207 tended to put in operation a permanent legislative policy governing the taxation of all banks then existing, which would accept its provisions, to endure at least during the corporate existence of all said assenting banks. The plaintiff submits that such is the true construction of said act, and that said act and its acceptance constituted a contract which the State cannot annul or repeal, and which is binding on the State in all its departments."

That the petition was demurred to, the demurrer was overruled, and judgment given for plaintiff, and the police judge was prohibited from proceeding with the criminal prosecution against complainant.

The suits of the Bank of Kentucky against the Franklin county court, against the board of councilmen of the city of Frankfort, and against the judge of the police court of the city of Louisville, were argued and heard at the same time by the court of appeals of Kentucky, and were decided by that court in one opinion, filed June 1, 1895, and reported as the bank-tax cases, 97 Ky. Rep., 590. A majority of the court of appeals held that the complainants here had an irrevocable contract with the State, and all its agencies, by virtue of its charter and the extensions thereof, and its due acceptance of the provisions of the Hewitt act and that the act of 1892 impaired the obligation of that contract in violation of the Constitution of the United States, and was, therefore, null and void.

The 19th clause of the bill in the case at bar is as follows:

"The complainant says that the defendants, Samuel H. Stone, Charles Finley and George W. Long, are threatening and unless restrained by this honorable court will proceed to value the franchise of the complainant in the manner set forth under the act of November 11, 1892, for the years 1895, 1896 and 1897 and certify such value to the county clerk of Jefferson county, to be by him certified to the collecting officer of the city of Louisville and to the county clerk of Franklin county, to be by him certified to the collecting officer of the board of councilmen of the city of Frankfort and the collecting officer of the county of Franklin; that such assessments will be illegal; in violation of the complainant's contract, as has been heretofore in causes between the complainant and the said several defendants adjudged and will be unlawful and violative of complainant's contract, and will cast a cloud over complainant's franchise; cause a multiplicity of suits to be brought against complainant and damage it in a way that cannot be repaired or estimated at the common law; and from these threatened wrongs the complainant has no remedy at the common law, but its only remedy is by a bill in equity; and unless restrained by this honorable
208 court, the defendants, The City of Louisville, The County of Franklin and The Board of Councilmen of the City of Frank-

fort, will attempt to levy and collect taxes based upon the apportionment of the valuation found by said board of valuation and assessment, and will subject the complainant to the embarrassment of many suits, and cast a cloud upon its franchises and property and an effort will be made to enforce penalties against this complainant, as hereinbefore set out."

It further appears that after the decision in the bank-tax cases, 97 Ky., 590, the personnel of the court of appeals changed somewhat, and when a new series of bank-tax cases, presenting the same question, came to that court, a different conclusion was reached. A majority of the court overruled the prior decision, rendered in 1895 and held that the banks, by accepting the provisions of the Hewitt act, did not acquire any contract rights with the State with reference to the mode or right of taxation and that the act of November 11th, 1892, was valid. *Deposit Bank v. Daviess County*, 39 S. W. R., 1030.

The defendants, The Franklin County Court, and The Board of Councilmen of the City of Frankfort, have filed a general demurrer to the bill. The defendants, Stone, Finley and Long, and The City of Louisville, have filed a demurrer, first, to the jurisdiction, and second, for want of equity. By stipulation of counsel for the complainant, defendants were also permitted to file answers without waiving demurrer. The only averment of the answer that is material, is as follows:

"These defendants allege that to grant the injunction prayed for would be (in effect) to enjoin the State of Kentucky, through her officers from executing the State constitution and the present revenue law of the State as construed by the court of last resort of the State. These defendants allege that to grant the injunction prayed for would be (in effect and in fact) to enjoin all proceedings in the State courts for collection of the taxes in controversy, contrary to section 720 of the Revised Statutes of the United States. The laws of Kentucky authorize the collection of taxes by suit in the circuit and county courts of the State. There is now pending in the Franklin circuit court, at Frankfort, Ky., a suit by these defendants against complainant and others for mandamus to compel the State board of assessment to value and apportion complainant's franchise and the auditor to certify the valuation and apportionment thereof to the county clerk of Franklin county, in order to collection of the taxes now in controversy herein between these defendants and the complainant."

The cause came on for hearing upon the demurrer to the bill, and upon a motion for a preliminary injunction.

209 TAFT, circuit judge, delivered the opinion of the court:

The bill attacks the validity of the Kentucky revenue law of November, 1892, and seeks relief against its enforcement on the ground that in its application to the complainant bank, it violates that clause of the Federal Constitution which forbids a State to pass a law impairing the obligation of a contract. The case is, therefore,

one arising under the Constitution of the United States and as it involves more than $2,000 it is within the jurisdiction of this court. Do the facts stated in the bill bring it within the equity jurisdiction of the court? It is well settled that in the Federal courts an action in equity will not lie to restrain the collection of a tax on the sole ground that it is illegal and void and independently of every other consideration. See *Rich* v. *Braxton*, 158 U. S., 375, 405. It must appear from the special circumstances averred that there is no adequate remedy at law and that there is some recognized ground for equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury. *Ogden City* v. *Armstrong*, 168 U. S., 224, 236; *Pacific Express Co.* v. *Seibert*, 142 U. S., 339; *Allen* v. *Pullman's Palace Car Co.*, 139 U. S., 658, 661; *Shelton* v. *Platt*, 139 U. S., 591; *Union Pacific R'y Co.* v. *Cheyenne*, 113 U. S., 516, 525; *Hannewinkle* v. *Georgetown*, 15 Wall., 547; *Dows* v. *Chicago*, 11 Wall., 108. What are the remedies at law which the complainant has? If the collecting officers proceed to collect the tax by distraint, the bank may under the duress of the threatened trespass, pay the taxes alleged to be illegal and then sue the city of Louisville, the county of Frankfort, and the city of Frankfort to recover them back. *Railroad Company* v. *Commissioners*, 98 U. S., 541. It is to be observed, however, that no such action will lie except upon payment under duress. The bank could not simply pay under protest and sue to recover back. Such a payment would be voluntary. There is no statute of Kentucky providing such a remedy as there was in Tennessee in the case of *Shelton* v. *Platt*. The remedy of paying and suing to recover back in Kentucky exists only when the collecting officer resorts to distraint. But the collecting officers are not obliged to collect the taxes by distraint, they may resort to a simple suit at law for them. In that case, the bank may defend on the ground of the invalidity of the law under which the taxes have been assessed. This remedy, except where the taxes are a cloud upon real estate, would ordinarily be inadequate, but under the pro-
210 visions of the revenue law of Nov., 1892, we do not think it is. By that law the bank on failing to pay the taxes assessed, according to its provisions within thirty days after notice from the collecting officer, is subjected to a penalty of 10 per cent. and to a fine of fifty dollars a day for every day of the delinquency to be enforced by indictment or by civil action. It follows that the remedy of defending a suit at law for taxes under this revenue act is attended with the risk of being compelled to pay fifty dollars a day for every day of the time necessarily consumed in the reasonable litigation of the question of the validity of the tax. By bill in equity, the bank may enjoin the assessment and pending the litigation, however long the delay, no fines or penalties can accrue against the unsuccessful litigant because by the terms of the act they do not begin to accrue until thirty days after notice to pay has been given by the collecting officer. It is manifest that the remedy at law by defending a tax suit in such cases is attended with a great and oppressive burden of risk which is absent

in an action in equity. The remedy at law is, therefore, entirely inadequate. *Smyth v. Ames*, 169 U. S., 466, 518; *Pacific Company v. Seibert*, 44 Fed. Rep., 315. It is no answer to say that the payment of the tax and the action to recover it back constitutes an adequate remedy because no such action will lie, as already explained, unless there is a distraint, actual or threatened, and the collecting officer by not distraining may wholly deprive the tax-payer of this remedy. Indeed, the counsel for the city of Louisville vigorously contends that the collecting officer in that city has no power to distrain for bank taxes. However, this may be, it would seem clear that a court of equity will not withhold relief from a suitor merely because he may have an adequate remedy at law if his adversary chooses to give it to him. The remedy at law cannot be adequate if its adequacy depends upon the will of the opposing party. To refuse relief in equity, upon the ground that there is a remedy at law, it must appear that the remedy at law is "as practical and efficient to the ends of justice and its prompt administration as the remedy in equity." *Boyce v. Grundy*, 3 Pet., 210, 215; *Sullivan v. Portland, etc., R. R. Co.*, 94 U. S., 806, 811. And the application of the rule depends upon the circumstances of each case. *Watson v. Sutherland*, 5 Wall., 74, 79.

The practice of the State courts of Kentucky in issuing injunctions against the collection of taxes cannot, of course, be a controlling consideration in determining the limits of the equity jurisdiction in the Federal courts in such cases; for it is settled that if
211 a case "in its essence be one cognizable in equity, the plaintiff—the required value being in dispute—may invoke the equity powers of the proper circuit court of the United States whenever jurisdiction attaches by reason of diverse citizenship or upon any other ground of Federal jurisdiction." *Smyth v. D. Ames*, 169 U. S., 466, 516. But it is worthy of note that the court of appeals of Kentucky has held that in the absence of a statute allowing an action to recover back from the State taxes illegally collected, the remedy by injunction is the only adequate one. In *Gates v. Barnett*, 79 Ky., 295, 296, the court in a suit to enjoin a distraint upon certain tobacco for the collection of taxes said:

"The right to have an injunction to restrain the collection of an illegal tax has been so long recognized and acted upon in this State that it is unnecessary to stop to inquire upon what ground that jurisdiction is exercised by courts of equity. The jurisdiction in this case, however, may be placed upon the ground of the inadequacy of the remedy at law. The officer acting in good faith and under color of right is justified by his process, and is not liable as a trespasser; and as a suit would not lie against the State directly, the only complete remedy is by injunction."

It is by no means clear that distraints or threatened distraints against a bank in view of the character of its business may not involve such serious detriment to its business and incidentally to the public, as to justify equitable intervention. In the case of *Lenaure County Savings Bank v. The City of Adrian*, 66 Mich., 273, 276, a levy

upon, and seizure of the bank furniture and fixtures was in progress when an injunction was issued.

Mr. Justice Campbell, speaking for the court, said:

"No point was made in the pleadings or on the argument against the jurisdiction of equity in this case. As the bank was not liable to taxation at all on its personal property and the levy was made in such a way as to directly interfere with its business, the case comes within the analogies of the cases represented by *Osborn v. Bank of U. S.*, 9 Wheat, 738, from which it cannot be readily distinguished. The court below does not appear to have doubted the jurisdiction, although deciding in favor of defendants on the merits."

In *Union Pacific Railway Co. v. Cheyenne*, 113 U. S., 516, 525, Mr. Justice Bradley said:

"It cannot be denied that bills in equity to restrain the collection of taxes illegally imposed, have been frequently sustained. But it is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax; for it must
212 be presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage or be subject to vexatious litigation, if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it had been collected by distress and sale of the tax-payer's lands, the loss of his freehold by means of a tax sale would be a mischief hard to be remedied."

The interference with the business of a bank and the injury to its credit caused by a distress against its personal property would seem to be a mischief equally hard to be remedied by a mere suit to recover the money back when thus collected.

If it were necessary we do think that it would be difficult to sustain the jurisdiction here on the ground that it will prevent a multiplicity of suits. The complainant is seeking to enforce a privilege or exemption which it avers has already been established by the decision of the highest court of the State. To how much more litigation is it to be subjected? Can it not have a remedy in equity against future attempts to invade the privilege already decided to belong to it? In *Osborn v. Bank of United States*, 9 Wheat, 738, 742, Chief Justice Marshall said: "The single act of levying the tax, in the first instance, is the cause of an action at law; but that affords a remedy only for the single act, and is not equal to the remedy in chancery, which prevents its repetition and protects the privilege." See also *Morris Canal and Banking Co. v. Jersey City*, 1 Beasley, 227; High on Injunction, sec. 530. In addition to the suits for future taxes there is also danger of harrassing suits for fines and penalties which the law permits to be brought for each day's delay in the payment of the taxes after they have been demanded. We have no doubt that if the complainant shows that the act of November, 1892, violates an exemption secured to it by contract it may have equitable relief.

The second question in the case is that raised by the averment of former adjudication. The case of *New Orleans v. Citizens' Bank*, 167 U. S., 371, it is impossible to distinguish from that before us upon the point of *res judicata*. The Citizens' bank, in New Orleans, was exempted from taxation by an act of the legislature of Louisiana, of January 30, 1836. Extension of its charter was granted and accepted and the question was mooted whether the exemption from taxation continued after extension. The bank brought suit in the district court of New Orleans to enjoin the collection of a tax
213 against it, on the ground that it had by legislative contract, exemption from the same. The district court sustained the claim, and enjoined the collection of the tax. A second suit, brought to enjoin another year's taxes, resulted in a similar judgment. Some years later the city of New Orleans having attempted to collect a tax, for a subsequent year, in violation of the exemption, the bank filed its bill in equity in the circuit court of the United States for the eastern district of Louisiana, to enjoin the officers of the State and city from proceeding to collect the tax and set forth the former adjudication as a conclusive estoppel upon the defendants as to the point of the previous litigation, namely, that there was a contract between the State and the bank, forbidding such taxation. The causes of action were not the same in the case brought in the Federal court and the cases adjudged in the State courts, because they involved taxes for different years, but the thing adjudged, to wit, the existence and binding effect of the contract for the exemption from the particular taxation was the same. The Supreme Court of the United States in this case held that the city of New Orleans and the State taxing authorities were conclusively estopped by the judgments in the State courts from asserting any right to collect the tax in violation of the contract adjudged to exist in the prior litigation and held that the contract having been thus established, the bank was entitled to relief from a violation of that contract by any acts of the State officials acting under the authority of State legislation. It had, theretofore, been doubted in some courts whether a judgment in a suit for taxes could be held to be an estoppel against a State or any agency of the State for the collection of taxes in a suit for taxes subsequently accruing, but the question is now definitely settled. Mr. Justice White, in delivering the judgment of the court, in a most elaborate opinion, said:

"The proposition that because a suit for a tax of one year is a different demand from the suit for a tax for another, therefore, *res judicata*, cannot apply, whilst admitting in form the principle of the thing adjudged, in reality substantially denies and destroys it. The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even though there be different demands, when the question upon which the recovery of the second demand depends, has under identical circumstances and conditions been previously concluded by a judgment between the parties or their privies. This is the
214 elemental rule, stated in the text books and enforced by many decisions of this court." * * *

"It follows, then, that the mere fact that the demand in this case is for a tax for one year, and the demands in the adjudged cases were for taxes for other years, does not prevent the operation of the thing adjudged, if in the prior cases the question of exemption was necessarily presented and determined upon identically the same facts upon which the right of exemption is now claimed."

In the case before us there can be no question, from the statement of facts and an examination of the records in previous cases as set forth therein, that the question which was adjudged in them was the identical question presented in the same way and for the same purpose as in the case at bar, to wit: whether there was a contract between the bank and the State which forbade the imposition of higher taxes than those imposed under the Hewitt act. It was distinctly adjudged, in behalf of the complainant against Franklin county and the city of Frankfort, by the court of appeals by the decision rendered in 1895, and by a mandate issued from that court to the Franklin circuit court, that such a contract in fact existed and rendered null and void the provisions of the revenue act of November 11th, 1892, under which the defendants now seek to impose taxes upon the complainant.

It is vigorously pressed upon us, however, that the judgment in the prohibition suit cannot be relied upon by the complainant bank to establish the existence of a contract of exemption between it and the city of Louisville, because there is nothing in the record to show that the issue made by the demurrer to the petition in that suit was the existence of such an exemption and its violation. Neither the mandate of the court of appeals nor the judgment of the Jefferson court states the ground for holding the ordinance void. It is said that some thirty days before the decision of the prohibition case by the court of appeals, that court, in *Levi v. City of Louisville*, 97 Ky., 394, held that the city of Louisville had no power under the constitution to substitute a license tax for *ad valorem* tax on personal property, and that this ruling must have led to overruling the demurrer to the petition in the prohibition suit, because it necessarily rendered the license tax upon the banks void. The Levi case was a suit by an owner of real estate to enjoin the collection of an *ad valorem* tax on his land on the ground that the city had not imposed such a tax on personalty, but had substituted therefor a license tax upon it,
215 and so had discriminated in favor of personal property and against realty. The court of appeals held that it was the duty of the city to impose an *ad valorem* tax on personalty, and that it could only impose a license tax on a business in addition to an *ad valorem* tax on property. We confess we cannot see how this decision would have determined the question at issue between the complainant bank and the city of Louisville, in the prohibition suit. There was nothing in the petition for prohibition to show that the license tax was a substitute for an *ad valorem* tax upon the personal property of the bank. There was nothing to show that the city of Louisville had not, under the revenue act of 1892 assessed an *ad valorem* tax on the bank's personalty. The license tax

was graduated by a percentage, not of the bank's personal property, but of the bank's gross receipts, and did not, therefore, purport to be a taxation on its personal property. The petition was not, therefore, demurrable under the Levi case. When we further consider that the sole ground stated in the petition for a prohibition was that the license tax was void, because it impaired the bank's contract of exemption and so violated the Constitution of the United States, and we find that this was the sole ground considered by the court of appeals in its opinion, we can have no doubt what was the point adjudged.

The case of *New Orleans v. The Citizens' Bank*, 167 U. S., 371, is relied on to support the contention that a judgment that a license tax violated the bank's contract of exemption cannot be pleaded as *res judicata* in a case presenting the question whether a franchise tax violates its right of exemption. In the New Orleans case, the language of the exemption was "the capital of said bank shall be exempt from any tax laid by the State, or by any parish or body politic under the authority of the State, during the continuance of its charter." It was held that a judgment holding this to be a valid exemption and one which rendered void any attempt to tax its capital or real and personal property used in its business, or to tax its shareholders by imposing an obligation on the bank to pay a tax on its stock for them, did not estop the city and the taxing officers from taxing property held by the bank, but not as capital, or from taxing shares of stock in the hands of the shareholders or from imposing a license tax. This result was reached, as the court points out, because the exemption clause might be entirely valid and inviolable as a contract so as to exempt capital and business property, and yet, under many decisions of the court, might not prevent the taxation of the shares of stock and
216 upon the same principle might not prevent a tax or license upon its business. In the case at bar the situation is very different. The provision of the exemption clause in the Hewitt act is that "*such bank and its shares of stock* shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank." If this exemption clause is irrevocable, it certainly prevents any additional tax upon the property of the bank. That is clear. The former adjudication was that this exemption was irrevocable and prevented the imposition of a tax even in the form of a license tax upon its business. If it prevents a license tax, *a fortiori* does it prevent a direct tax upon its property, tangible and intangible. The tax imposed by the revenue act of 1892 was called a franchise tax, but it has been held, both by the Supreme Court of the United States and of the court of appeals of Kentucky to be in fact nothing but an *ad valorem* property tax. *Henderson Bridge Company v. Kentucky*, 166 U. S., 150; *Adams Express Co. v. Kentucky*, 166 U. S., 171; *Henderson Bridge Company v. Commonwealth*, 99 Ky., 623.

Nor can there be any doubt that the parties to the former adjudications and this litigation are the same. The real parties in interest to this cause among the defendants are Franklin County, the City

of Frankfort and the City of Louisville. It is for them that the board of valuation and assessment are about to apportion the estimated value of the franchise and to certify it to them for the collection of taxes. The members of the board of valuation are nothing but their agents created under the law for the purpose of assessing this tax. If the parties in interest in whose favor the tax is to be assessed are bound by the prior litigation, certainly the agencies acting for them under the law are equally bound. In this light the board of valuation and assessment is in respect to the former judgments privy to the city of Louisville and county of Franklin and the city of Frankfort. There is no dispute that the county of Franklin and the city of Frankfort were parties to the respective suits pleaded as former adjudications. The only controversy which is made is whether the city of Louisville was a party to the prohibition suit set forth in the bill. The original litigation was in form a criminal prosecution against the bank for failure to pay a license. That prosecution was in the name of the city of Louisville. The subsequent litigation, however, was in the form of a proceeding in prohibition against the judge of the city court, in which the criminal prosecution had been conducted, on the ground that that court was exceeding its
217 jurisdiction, because proceeding under a void law. To that writ of prohibition, the city of Louisville was not formally made a party in the Jefferson circuit court, but the litigation before the Jefferson circuit court was conducted by the city of Louisville. It was the real party in interest. It was against it that the writ of prohibition was really directed, for at its instance and for its benefit the criminal prosecution had been begun. When, therefore, an appeal had been taken from the Jefferson circuit court to the court of appeals, the appellants were the City of Louisville and the Judge of the Police Court. By this means the city of Louisville formally made itself a party to the record and the mandate which went down was as binding upon it as upon the judge of its court. Had it attempted to proceed with the prosecution it might have been attached for contempt. Bacon's Abridgement, prohibition M. It is urged that the litigation was really a criminal litigation and that a judgment in a criminal case cannot be made the basis of a plea of *res judicata* in a civil action. The original case was criminal in form, but the subsequent litigation by writ of prohibition was civil and the real parties to it were the defendant in the police court and the city of Louisville, in whose interest the suit was prosecuted in that court. It would have been entirely proper to make the city of Louisville a party defendant to the original writ of prohibition. Indeed, some courts would hold that it was a necessary party. *Armstrong v. Taylor County Court*, 15 W. Va., 190; *Walton v. Greenwood*, 60 Me., 356. However this may be, the city of Louisville, admitting its interest, did appear as appellant and so made itself a party to the whole litigation, and was so treated by the court of appeals of Kentucky. As the parties to this litigation are the same as those in the former suits except the board of assessment which is in privity with the other defendants and as the point adjudged is exactly the same, we can see no escape from the conclusion that the defendants here

are estopped from asserting that the complainant has not a contract exempting it from any other taxation than that provided in the Hewitt law, and, therefore, that the act of November 11, 1892, is an infringement of that contract and impairs its obligation in violation of the Constitution of the United States.

It is suggested that such a conclusion ousts this court from jurisdiction, because it makes the case turn on a question which does not arise under the laws or Constitution of the United States. We cannot assent to this suggestion. The complainant asserts that it has a contract with the Commonwealth in respect to taxation,
218 the obligation of which the city of Louisville, the city of Frankfort and the county of Franklin, by the enforcement of a subsequent law of the State are seeking to impair. The defendants deny the existence of such a contract and we must determine whether, as between the parties such a contract exists. It appears that as between the complainant and the defendants, it has been conclusively adjudicated that such a contract exists. This relieves the court from re-examining that question as an original one between the present parties, but it does not free the court from the obligation to enforce the Constitution of the United States, in favor of the complainant by enjoining the enforcement of a law which will impair the obligation of a contract thus conclusively established. The case of *New Orleans v. Citizens' Bank*, 167 U. S., 371, which presented precisely this aspect was begun in the circuit court of the United States and was carried to the Supreme Court of the United States and the jurisdiction by the circuit court was not even questioned.

It is argued that the Federal courts, in considering the question whether a State law impairs the obligation of a contract, will not accept as conclusive the construction which the supreme court of the State has put upon its constitution or laws in determining the existence of a contract and its violation. This is true and is settled by a long line of authorities. *Shelby Co. v. Union Bank*, 161 U. S., 149; *Mobile & Ohio R. R. Co. v. Tennessee*, 153 U. S., 492, '3; *Bryan v. The Board of Education*, 151 U. S., 650; *L. & N. R. R. Co. v. Palmes*, 109 U. S., 256; *Douglas v. Kentucky*, 168 U. S., 488, 502, and cases cited. But the rule has application only where the judgment of the State court is under direct review or in cases in which the opinion of the State court is cited merely as an authority and a precedent. It has no application to a case in which a prior judgment of the State court between the same parties is pleaded or is offered in evidence in a subsequent suit in a Federal court as *res judicata* binding the parties. The State court is as much bound by the Constitution of the United States as a Federal court and is vested with as complete jurisdiction in causes otherwise within its cognizance to decide between the parties before it whether a statute of the State impairs the obligation of a contract. *Robb v. Connolly*, 111 U. S., 624, 637. Such decision embodied in a judgment unreversed is as binding with respect to the point adjudged as if it had been rendered by the Supreme Court of the United States. The distinction between the right and duty of the Supreme Court to decide for itself the question of contract or no contract without regard to the State

decisions, and its obligations to respect the bar of *res*
219 *judicata* as between the parties, is quite clearly made in *Douglas v. Kentucky*, 168 U. S., 488, 503, although not expressly commented on. In that case after maintaining in the strongest terms the obligation of the Supreme Court to exercise an independent judgment in determining the existence of a contract and its impairment, and after declining to follow a prior decision of the State court upon the subject, the court considered as a distinct matter the question whether the point had not been formerly adjudged in a State court between the same parties, and pointed out with much care that the point of the former adjudication was not the same as that then before the court. The whole discussion would have been wholly unnecessary if, as contended by counsel for defendants, the doctrine of *res judicata* has no application in the Federal courts when the former adjudication is that of a State court upon a question arising under the Federal Constitution.

One other point remains for consideration. The answer pleads that a mandamus proceeding has been instituted in a State court by the city of Frankfort to compel the board of valuation and assessment to certify the apportioned valuation of the franchises of the complainant; that this mandamus proceeding was begun before the action under consideration and is pending, and that the preliminary injunction issued by this court will be in effect an injunction against that proceeding in the State court. We do not think so. It is settled that the pendency of a suit in a State court is no bar to a suit upon the same subject-matter in this court. *City of North Muskegon v. Clark*, 22 U. S. App., 522, and cases therein cited. The injunction which we shall grant may be offered as a defense by the board of valuation and assessment in the court where the mandamus proceeding is pending, just as a judgment rendered in one of two pending suits for the same cause of action may be offered by supplemental pleading in the other. The sufficiency of the defense will be for that court. We do not enjoin any suit at all by our order; all we do enjoin is the certification of the taxes. That does not require the defendants to disobey an order of any other court or restrain their prosecution of a suit therein.

The demurrer to the bill must therefore be overruled and the preliminary injunction prayed for must issue.

220 Circuit Court of the United States, District of Kentucky.

BANK OF COMMERCE, Complainant,
vs.
CITY OF LOUISVILLE, Defendant. } No. 6568.

BANK OF COMMERCE, Complainant,
vs.
SAMUEL H. STONE and Others and THE CITY of Louisville, Defendants. } No. 6567.

Before Harlan, circuit judge, and Taft and Lurton, circuit judges.

Heard on demurrer to the bill and motion for preliminary injunction.

The Bank of Commerce is a State bank of Kentucky, organized under a statute of that State, approved February 10, 1865. It is situated in Louisville, and when the Hewitt act was passed to amend the revenue laws of the Commonwealth of Kentucky, May 17, 1886, it duly accepted the terms of that act before the meeting of the next legislature of Kentucky. One of the grounds relied upon in the bill was that of *res judicata*. The averments of the bill upon this point were contained in paragraphs 4 and 5 of the bill, as follows:

"Paragraph 4. Your orator shows that early in the year 1894, and before the 4th of May, 1894, the defendant, The City of Louisville, claiming to act under the authority of the statute governing cities of the first class, and of its ordinances adopted in pursuance thereof, demanded of your orator, and of every other bank and trust company in the city of Louisville, a tax equal to 4 per cent. of its gross receipts, and this demand being refused, legal proceedings were commenced in the city court of Louisville, in behalf of the city, against all of said banks and trust companies, including your orator. At that date the tax upon the gross receipts of the banks, if enforceable, was payable to the sinking fund of the city of Louisville, and with a view of embarrassing the sinking fund of the city as little as possible, the banks, through their committee, held a meeting with the commissioners of the sinking fund, and it was agreed between the city of Louisville and its sinking fund commissioners upon the one part and the banks and trust companies of the city of
221 Louisville, including your orator, upon the other, that pending the litigation which, by the agreement, was to be inaugurated, and without prejudice to the right of the banks, they would make payments and loans to said sinking fund as follows:

"First. The sinking fund was to accept from each of said banks and trust companies a payment equal to the difference between the amount which the banks and trust companies would have to pay to the State under the present law and the amount which they would be required to pay for State taxes under the provisions of the Hewitt bill. This sum, it was provided, should be an actual payment, and not be repaid under any circumstances, but its payment was not in any manner or to any extent to prejudice the banks or trust com-

panies paying it, or to be taken as a waiver of any legal right which they might have in the premises.

"Second. In addition to making the above payments, the banks and trust companies, save those which were to be selected to test the question involved, should each lend to the sinking fund a sum, which, added to said payment, would equal 4 per centum of its gross earnings during the year 1893, and the sinking fund would execute for said loans its obligations, agreeing to repay the same with interest at 4 per centum per annum; and, if it should be finally adjudged by the court of last resort that said banks or trust companies were not liable to pay the license fee required by the ordinance aforesaid, but if it should be finally adjudged that they were liable to pay said license fee, then said loan should be taken and deemed as a payment of said license fee, and the obligation to repay same should be void.

"Third. It was agreed that the banks or companies selected to test the questions involved would each lend the sinking fund a sum equal to 4 per centum of the gross earnings for the year 1893, and would receive therefor the obligations of the sinking fund as above described.

"Fourth. It was further agreed that that arrangement was entered into with the understanding that the banks and companies would institute without delay and diligently prosecute such action as might be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund would not prosecute them, or any of them, for doing business without license.

"The substance of this agreement was spread at large upon the records of the sinking fund, and a copy thereof is filed herewith as part hereof, marked "A."

The Exhibit "A," referred to is as follows:

"SINKING FUND OFFICE, *February* 13, 1894.

A committee, consisting of Messrs. Thomas L. Barrett, John H. Leathers and George W. Swearingen, appeared before the board on behalf of the banks, who are members of the Louisville clearing-house, and stated that it was the purpose of said banks to resist
222 the payment of the license fee demanded of them under the license ordinance approved January 29, 1894, on the ground that said banks were not legally liable to pay the same, but in order to save the sinking fund from any embarrassment occasioned by their refusal to pay said license fee, the banks, with two or three exceptions, were willing to enter into an arrangement, whereby they would pay a part of the amount demanded of them, and lend the sinking fund the balance thereof, to be repaid with interest at four per centum per annum, if it was finally decided and adjudged that the banks were not liable to pay said license fees.

After discussion, the president was, on motion of Mr. Tyler, seconded by Mr. Summers, authorized to enter into the following arrangement with the different banks, trust and title companies,

who will be subject to the payment of the license fees, if the license ordinance is finally adjudged to be valid and enforceable:

First. To accept from each of said banks and companies a payment equal to the difference between the amount they now pay to the State for State taxes and the amount they would be required to pay for State taxes under the provisions of what is known as the Hewitt bill. This sum shall be an actual payment, not to be repaid under any circumstances, but its payment shall not in any manner, or to any extent, prejudice the banks or companies paying it or be taken as a waiver of any legal right which they have in the premises.

Second. In addition to making the above payments, the said banks and companies, save those selected to test the question involved shall each lend the sinking fund a sum which added to said payment will equal four per centum of its gross earnings during the year 1893, and the sinking fund will execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it shall be finally adjudged by the court of last resort that said banks or companies are not liable to pay the license fee required by the ordinance aforesaid, but if it is finally adjudged that they are liable to pay said license fee, then the said loan shall be taken and deemed as a payment of said license fee, and the obligation to repay the same shall be void.

Third. The banks or companies selected to test the questions involved will each lend the sinking fund a sum equal to four per centum of their gross earnings for the year 1893, and will receive therefor the obligations of the sinking fund as above described.

Fourth. This agreement is to be entered into with the understanding that the said banks and companies will institute without delay and diligently prosecute such actions as may be necessary to settle and adjudge the right and liabilities of the parties in the premises and pending such proceedings the sinking fund will not prosecute them or any of them for doing business without license.

A true copy.

Attest:

J. M. TERRY,
Secretary and Treasurer.

223 Stipulation between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, and the banks, trust and title companies of the city of Louisville:

It is agreed between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, represented by H. S. Barker, city attorney, acting under the advice and by the authority of the board of sinking fund commissioners given at a regular meeting of said board and the mayor of the city of Louisville on one part, and the various banks, trust and title companies of the city of Louisville, acting by Humphreys & Davie and Helm & Bruce, their attorneys, of the other part:

First. That in February, 1894, it was agreed between the city of Louisville and the board of sinking fund commissioners, acting together in the interest of the said city, and the various banks, trust

and title companies, acting through their committee, to wit: Messrs. Thomas L. Barrett, John H. Leathers and George W. Swearingen, and their counsel, to wit: Messrs. Humphrey & Davie and Helm & Bruce, that the question of the liability of said banks and trust and title companies to pay municipal taxes, either license or ad valorem, otherwise than as provided by the revenue law, commonly known as the Hewitt bill, should be tested by appropriate litigation looking to that end.

Second. In order to effectually test the question as to all of said companies they were divided into three classes, it being understood that all who had accepted the provisions of the said Hewitt bill would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It being understood that the trust and title companies which had accepted the provisions of the Hewitt bill, would fall in class B, named above.

Third. In pursuance of that agreement the sinking fund commissioners, caused to be issued warrants against the Bank of Kentucky, representing class A; the Louisville Banking Company, representing class B, and the Third national bank, representing class C, and these banks respectively applied for writ of prohibition against the city court of Louisville proceeding with the hearing, that being the manner pointed out by the city charter for testing the validity of city ordinances.

It was distinctly understood and agreed at that time, and this agreement was made for the best interest of all parties to it, that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing a contract and the validity thereof
224 under the Hewitt bill, that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the Hewitt bill.

Fourth. On the faith of this agreement all of the banks and companies aforesaid paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commissioners, of February 13, 1894, an attested copy of which is hereto attached as part hereof, but at a later date and in further reliance upon said agreement all said banks and companies, except those actually involved in the test cases, paid the whole of the amount of taxes claimed as against them by the city of Louisville without reservation until the question thus raised should be finally disposed of.

HUMPHREY & DAVIE,
HELM & BRUCE,
For the Banks, Trust, and Title Companies of the City of Louisville.
H. S. BARKER, *City Attorney.*

Approved.

C. H. GIBSON,
Pres't Com'rs Sinking Fund, City of Louisville.

A true copy.
Attest:

HUSTON QUIN.
ARTHUR PETER.
M. McLOUGHLIN."

So much of the certified transcript of the judgment in the proceedings in prohibition as is of importance has been set forth in the report of the case of the Louisville Banking Company against the same defendants.

TAFT, circuit judge, delivered the opinion of the court:

In the case of the *Bank of Kentucky v. Stone*, just decided, we have held that by the judgment of the court of appeals and of the Jefferson circuit court in the prohibition suits, the city of Louisville was estopped to deny as against the parties to that judgment, that they had an irrevocable contract of exemption from any greater burden of taxation than that imposed in the Hewitt act. The complainant in the case now before us was not a party to the record in either of the three prohibition suits, but it claims the benefit of the judgment therein as a privy to the parties. This privity is said to arise from an agreement between the city of Louisville on the one part and certain banks of Louisville, including the complainant, on the other, by which it was stipulated that the controversies between all the banks and the city should abide the event in test suits to be instituted by three banks selected to represent three classes.

Two questions are presented for our consideration:

225 First. Was the contract described in the bill and attached to it as an exhibit, the contract of the city of Louisville?

Second. If so, did the contract bring the complainant into such relation to the prohibition judgment and the parties thereto that it may claim the benefit of the estoppel of that judgment?

First. The averment of the bill is that the contract set forth was signed by the president of the sinking fund and by the attorney for the city under the authority and direction of the mayor and board of sinking fund commissioners and by the counsel who represented the banks in said litigations. The bill further recites that the agreement was made between the city of Louisville and its sinking fund commissioners and the banks and trust companies including the complainant. Upon demurrer to the bill, these averments would doubtless be sufficient to show that the contract which was made was the contract of the city of Louisville. But the case is pending also upon the motion for a preliminary injunction; and upon that motion it is proper for us to consider the answer of the city of Louisville, which by stipulation, was permitted to be filed without the withdrawal of the demurrer. The answer contains this averment:

"This defendant denies that said alleged agreement, an alleged

copy of which, or the substance of which is filed with complainant's bill, marked 'A,' was signed by the attorney for the city of Louisville, under the authority of the mayor, or that this defendant executed or delivered said alleged contract or agreement or that the same was ever authorized, ratified or approved by the general council and mayor of the city of Louisville and said alleged agreement or contract set forth in said copy marked 'A' is not the act and deed of this defendant, and in so far as the same purports to be an agreement or contract by or with this defendant, it was beyond the lawful power or authority of the city attorney, mayor, or any other officer of this defendant to execute or deliver for or on behalf of this defendant, and the same was made without express authority of law, and was and is null and void, and of no binding force or effect upon this defendant, nor does the same operate to prevent or defeat the power and authority vested in this defendant by said act entitled 'An act for the government of cities of the first class' approved July 1, 1893, to levy and collect its municipal taxes from the complainant and other banks and trust companies.

This defendant states that said commissioners of the sinking fund of the city of Louisville was, in 1894, and long prior thereto, and ever since has been a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to
226 execute the duties required and powers given by the act incorporating the same and the amendments thereto; but, neither said commissioners of the sinking fund of the city of Louisville, nor the president nor the attorney thereof, nor all of them together had any lawful power or authority thus to bind or obligate defendant by the terms, conditions, stipulations or covenants or either of them, contained in said alleged agreement or contract at the time, in the manner or under the circumstances alleged in complainant's bill or otherwise."

Upon a motion for preliminary injunction, therefore, the issue is raised whether those who signed the contract on behalf of the city of Louisville were authorized to bind it thereto. We are of opinion that the city attorney was vested with ample authority to bind the city of Louisville to the contract mentioned in so far as it affected the complainant herein. By section 2909 of the Revised Statutes of Kentucky it is provided that "there shall be elected by the general council, immediately upon the assembling of the new board, a city attorney, whose duty it shall be to give legal advice to the mayor and members of the general council, and all other officers and boards of the city in the discharge of their official duties. If requested, he shall give his opinions in writing and they shall be preserved for reference. It shall also be his duty to prosecute and defend all suits for and against the city, and to attend to such other legal business as may be prescribed by the general council."

The foregoing section makes this officer the retained attorney of the city in every suit brought against it. The question at issue between the banks and the city of Louisville was whether the city

could collect license taxes under one of its ordinances. The banks notified the city attorney and the commissioners of the sinking fund whose duty it was to receive the money for the benefit of the city that they intended to resist the collection of the tax by litigation. It was the duty of the city attorney under the statute above set forth to take charge of the litigation thus about to be brought. It was his duty as the attorney of the city to save, so far as he could without prejudice to the city's interest, costs which might be accumulated should suits to the number of twenty be brought and won by the banks against the city. It seems plain to us that it was within his general authority as attorney to make an arrangement with the intended litigants, by which the litigation to be brought should be reduced in volume to as few cases as possible by means of a stipulation that all the suits involving the same questions should abide the result in one suit to be brought. We think that such a stipulation was a mere step in the management of the litigation and was entirely
227 under the control of the attorney retained for the suits. It did not work to the prejudice of the city in the slightest. Had the suits actually been brought, a stipulation between the city attorney and the attorneys for the banks of this character would have been as clearly part of the ordinary management of the suits as any other arrangement for expediting their trial. No material distinction can be suggested between the power of the city attorney to make an agreement of this character with respect to intended suits and suits actually filed. The control that an attorney has by virtue of his office over the suit in which he is employed is very wide in respect to those matters that relate to the progress of the suit and the mode of reaching a conclusion and which do not deprive the client of a full opportunity to be heard by his attorney on the issues raised in the case. Such authority inheres in the relation between an attorney and client in respect to litigation and the authorities fully sustain this conclusion.

In *North Missouri R. R. Co. v. Stevens*, 36 Mo., 150, the plaintiff railroad company brought several suits against different stockholders in which the questions were precisely the same. The attorneys for the respective parties entered into a written agreement stating that as the same facts arose in all the cases they would abide by the judgment that should be rendered in one of them and that a like judgment should be rendered in each of the several cases. It was contended in that case that the attorneys who made the agreement had no authority to make the agreement and that it was void. The court sustained the agreement as within the authority of the attorney. It said:

"The arrangement in this case is not a compromise according to the usual acceptation of that term, for that generally applies to releasing a part of the debt, taking land instead of money, or changing the nature and character of thing to be recovered; it comes nearer within the general management of the case."

In *Ohlquest v. Farwell & Co.*, 71 Iowa, 231, a client was a party to two suits involving substantially the same question. It was held competent for his attorney to bind him by an agreement that only

one of the cases should be tried, and that the judgment resulting from such trial should determine the kind of judgment to be entered in the other case. In delivering the opinion of the court, Judge Beck said:

"It is undoubtedly true that an attorney cannot consent to a judgment against his client or waive any cause of action or de-
228 fense in the case; neither can he settle or compromise it without special authority. But he is, by his general employment authorized to do all acts necessary or incidental to the prosecution or defense which pertain to the remedy pursued. The choice of proceedings, the manner of trial, and the like, are all within the sphere of his general authority, and, as to these matters, his client is bound by his action. These rules are conceded by counsel in this case. It cannot be doubted that under them counsel for parties in several suits, involving the same issues, may, in the exercise of their general authority, consent to the consolidation of all for trial, or stipulate that the trial of one shall determine the others. This pertains to the remedy pursued—to the manner of trial—and is not an agreement for judgment or a compromise. The parties are not deprived of a trial, nor is judgment rendered by consent. The counsel simply assent to a trial in a particular manner; that one trial shall settle the same issues in several cases. This is just what was done by the counsel for Becker in this case. The form of agreement is that judgment in his case should follow a trial in another action. This is not an agreement for a judgment, but in effect an agreement for a manner of trial."

See also *Eidon v. Finnegan*, 48 Mo., 33; *Gilmore v. American Central Ins. Co.*, 67 Cal., 366.

In Thompson on Trials, 1st vol., section 195, the author says:

"Where several cases are pending in court, depending upon the same facts or questions of law, it is competent for the attorneys in virtue of their general retainers, to stipulate that only one shall be tried and that the others shall abide the result of that one."

We think therefore, that in so far as the issues arising between the banks not actually engaged in the litigation and the city of Louisville were the same as in the three suits which were brought as test cases, the contract made by the city attorney was binding upon the city.

The next question is whether the contract made enables the complainant bank to claim the benefit of the estoppel of the judgments thereafter rendered. We think it does. In *Patton v. Caldwell*, reported in 1st Dallas, 419, the action was on a policy of insurance. Counsel for plaintiff offered to read in evidence a special verdict that had been given in another action against a different underwriter. This was objected to on the ground that the verdict was given between other parties and therefore, not admissible; upon which an agreement of all the underwriters to be bound by one verdict was proven.

McKean, chief justice, said:

"The defendant had no opportunity of cross-examining, upon

the former trial; and the answer is, that he, with the
229 rest of the underwriters, had agreed to be bound by one verdict; which is certainly the only ground for offering the evidence proposed by the plaintiff's counsel.

Whether this agreement was made in person or by a broker mutually employed, it is equally binding on the parties; and, under the agreement, all the underwriters were fully entitled to interfere upon the former trial, and to cross-examine the witnesses then produced. Although, therefore, we should not have allowed the special verdict to be read without full proof of the agreement, yet, on receiving that satisfaction, we think it would be unfair to suppress it; and, for the future, we desire that all such agreements may be entered on the records of the court."

The court then held that the verdict thus offered was not conclusive. As this latter proposition, however, is in conflict with the rule laid down by the Supreme Court of the United States in a recent case of *South Pacific R. R. Co. v. United States*, 168 U. S., 1, that part of the decision cannot be regarded as authority here.

In *Brown, Russell & Russell v. Sprague*, 5 Denio, 545, several ejectments were pending between one claiming title and persons having only the naked possession of the lands. An agreement was made between all the parties that the suits should be stayed and await the event of a suit between other parties in which the same questions arose. It was held that a judgment in that suit would operate as an estoppel between the parties to the agreement.

Mr. Freeman, in his work on Judgments, says, section 174:

"Neither the benefit of judgments on the one side nor the obligations on the other are limited exclusively to parties and their privies. Or, in other words, there is a numerous and important class of persons who, being neither parties upon the record nor acquirers of interests from those parties after the commencement of the suit, are nevertheless bound by the judgment. Prominent among these are persons on whose behalf and under whose direction the suit is prosecuted or defended in the name of some other person. * * * The fact that an action is prosecuted in the names of nominal parties cannot divest the case of its real character, but the issues made by the real parties, and the actual interests involved, must determine what persons are precluded from again agitating the question, and who are estopped by the previous decision. Whenever one has an interest in the prosecution or defense of an action, and he, in the advancement or protection of such interest, openly takes substantial control of such prosecution or defense, the judgment, when recovered therein, is conclusive for and against
him to the same extent as if he were the nominal as well as
230 the real party to the action. * * * Where one seeks the benefit of an estoppel by judgment on the ground that he was the real party in interest in an action, he must show that he conducted the action or defense openly, to the knowledge of the adverse party and for the protection of his own interests."

These principles are sustained by the cases cited by that learned author. See *Cole v. Favorite*, 69 Ills., 457; *Wood v. Ensell*, 63 Mo.,

193; *Executors of Tate v. Hunter*, 3 Strobhart, 136–140; *Palmer v. Hayes*, 112 Ind., 289; *Gill v. United States*, 7 Court of Claims, 522, 526. See also Herman on Estoppel, section 139.

In Greenleaf on Evidence, vol. 1, section 523, the principle is stated as follows:

"But to give full effect to the principle by which parties are held bound by a judgment, all persons who are represented by the parties, and claim, under them, or in privity with them, are equally concluded by the same proceedings. We have already seen that the term privity denotes mutual or successive relationship to the same rights of property. The ground, therefore, upon which persons standing in this relation to the litigating party are bound by the proceedings to which he was a party is, that they are identified with them in interest; and wherever this identity is found to exist, all are alike concluded. Hence, all privies, whether in estate, in blood, or in law, are estopped from litigating that which is conclusive upon them with whom they are in privity. And if one covenants for the results or consequences of a suit between others, as if he covenants that a certain mortgage, assigned by him shall produce a specified sum, he thereby connects himself in privity with the proceedings, and the record of the judgment in that suit will be conclusive evidence against him."

In the case of *Rapelye & Purdy v. Prince & Prince*, 4 Hill, 119, Mr. Justice Bronson, speaking for the supreme court of New York, said:

"When one covenants for the results or consequences of a suit between other parties, the decree or judgment in such suit is evidence against him, although he was not a party."

In the present case there can be no doubt from an examination of the contract and the averments of the bill that the three suits which were conducted were openly conducted in the interest of all the parties to the agreement with the knowledge and by the consent of the city of Louisville, and that the counsel who appeared for the parties to the records were at the same time discharging their duties as counsel for the other banks who had made the agreement. If any one can be bound by a judgment to which he is not a party, it would seem that the banks here must have been
231 so bound. Had the result gone the other way and a judgment been rendered in favor of the city of Louisville in the cases referred to, it cannot admit of doubt that all the banks would have been bound by the decision. As part of the consideration for the settlement of the litigation in the manner fixed by the agreement, the banks paid to the sinking fund commissioners for the city of Louisville the substantial sum of $150,000. Had the agreement not been entered into, it is certain that the complainant would have obtained formal judgment in a prohibition suit and would now have been in the same position as the Louisville Banking Company. Relying on the binding character of the agreement, however, judgment was not taken in the name of complainant. Equity and justice require that effect should be given to an agreement upon the faith of which $150,000 was immediately paid to the city and a

formal judgment was not taken. It is just that inasmuch as the banks would have been bound by a diverse judgment, they shall have the benefit of a judgment which was rendered in favor of their colleagues selected to represent them in the suit. This conclusion necessarily leads to the result that the demurrer to the bill must be overruled and the motion for a preliminary injunction allowed.

232 Circuit Court of the United States, District of Kentucky.

LOUISVILLE TRUST COMPANY
vs.
SAMUEL H. STONE and Others. } No. 6583.

LOUISVILLE TRUST COMPANY
vs.
CITY OF LOUISVILLE. } No. 6584.

FIDELITY TRUST & SAFETY VAULT CO.
vs.
SAMUEL H. STONE and Others. } No. 6581.

FIDELITY TRUST & SAFETY VAULT CO.
vs.
CITY OF LOUISVILLE. } No. 6582.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

The Louisville Trust Company and the Fidelity Trust & Safety Vault Company were parties to the agreement made between the banks of Louisville and the city attorney, by which the question of the liability of the banks of Louisville under the license ordinance of the city of Louisville was carried by three test cases to the court of appeals. By that agreement these trust companies were included within the clause represented by the Louisville Banking Company, as a bank of the State, organized since the act of 1856.

The trust companies were organized under charters, each of which contained the following clause: "But nothing herein shall
233 be construed to permit said company to discount paper or to engage in the business of banking." By subsequent amendments some additional powers were given which are usually exercised by banks, but there was no amendment to the charter of either permitting it to engage in the business of regular or general banking. The power to qualify and act in various trust or fiduciary capacities constituted the chief object in the organization of these companies. Section 5 of the amended charter of the Louisville Trust Company contains the following:

"For purposes of taxation, this company shall be classed and treated as one of the banks of this State, and shall be subject to and pay the same rate of taxes, to same parties, at the same time, in same manner and for the same purposes only, as may be provided by law from time to time, as the banks doing business in this State."

In the case of the *Louisville Trust Co. v. City of Louisville*, 30 S. W. R., 991, Judge Grace, in the course of his opinion, expressed the view that this was not a bank, and that it was not entitled to any exemption from taxation, because it rendered no public service to the State, and that this was the only ground upon which it could be excused from taxation under the old constitution. It has been held by the court of appeals of Kentucky that it was competent to exempt banks, under that constitution, because they did render public services. It is thus apparent that the question whether the trust companies had an irrevocable contract under the Hewitt act, was not the same as that presented with respect to the banks. The power of an attorney to bind his client by consenting that a decision in another case shall be binding upon him in the case in question, can only exist where the two cases involve the same questions of law and fact. Otherwise, the attorney might conclude his client's rights by an event having no relevant relation to the merits of the controversy in which he is acting as attorney. Hence, it follows that the contract of the city attorney on behalf of the city of Louisville, in so far as it attempted to make the taxation of the trust companies depend upon the judgments in the three test cases of the banks, was beyond his authority, and that the trust companies cannot rely on those judgments as *res judicata*.

Indeed, the same conclusion may be reached irrespective of the city attorney's authority. The point adjudged in the three cases was, that banks accepting the Hewitt act had an irrevocable tax exemption. The point at issue here concerns the tax exemption of the trust companies. This is a different question, as we
234 have seen, and is not foreclosed, therefore, by the judgment in favor of the banks. The indispensable element in a successful plea of *res judicata* is that the point adjudged and the point at issue shall be the same.

If the complainants cannot rely on the bar of the prior adjudication, we must of course reach the same conclusion upon the question of irrevocable contract on its merits that we have reached in the case of the Northern Bank of Kentucky.

The motion for preliminary injunction must, therefore, be denied, the demurrers to the bills sustained and the bills dismissed.

235 Circuit Court of the United States, District of Kentucky.

FIRST NATIONAL BANK
vs.
SAMUEL H. STONE and Others. } No. 6575.

FIRST NATIONAL BANK
vs.
CITY OF LOUISVILLE. } No. 6576.

AMERICAN NATIONAL BANK
vs.
SAMUEL H. STONE and Others. } No. 6569.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

The First National bank was organized in October, 1863, under the national banking laws and its charter rights were extended September 6, 1882. It did not formally accept the Hewitt act in accordance with the terms of that act. The averment of the bill upon this point is: "Your orator shows that from the first day of July, 1887, although it was not by the United States banking acts bound to submit to taxation under the 'Hewitt bill,' it nevertheless did so, and from said date regularly reported to the auditor of public accounts of the State of Kentucky under and in accordance with the provisions of said 'Hewitt bill,' and the said State through its proper officers received and appropriated said taxes paid by your orator as aforesaid. Your orator has no real estate and never had. In the way above stated, your orator accepted the provisions of the 'Hewitt bill.'"

The American national bank was organized after the passage of the Hewitt act, so that it could not accept that act in accordance with its provisions. The averment of its bill upon this point is: "Your orator shows that from the first day of July, 1890, although it was not by the United States banking acts bound to submit
236 to taxation under the Hewitt bill it nevertheless did so, and from said date regularly reported to the auditor of public accounts of the State of Kentucky under and in accordance with the provisions of said Hewitt bill, and the said State through its proper officers received and appropriated said taxes paid by your orator as aforesaid. Your orator has since its organization paid to the city taxes on the building in which it does business. In the way above stated your orator accepted the provisions of the Hewitt bill."

Each of the bills in the above-entitled causes contained these averments: "Your orator respectfully shows to the court that the existing laws of the State of Kentucky do not provide for taxing the shares of your orator as permitted by the act of Congress, but attempt to subject to taxation its franchise granted by the Congress of the United States and its other intangible property, such as its surplus, undivided profits and investments, without lawful right to do so, and contrary to the act of Congress in such cases made and

provided. Your orator has never consented to this method of taxation, but has always protested against the same as illegal and contrary to the act of Congress. And your orator respectfully submits that said statute of the State of Kentucky is repugnant to the act of Congress in such cases made and provided, and because of said repugnancy is void and of no binding force as against your orator.

"Your orator further shows and submits to the court that by rsason of the formal contract entered into by all the other banks and trust companies in the city of Louisville, and by reason of the former adjudication in favor of said banks and trust companies establishing the validity of said contracts, they will escape local taxation, except on the houses owned by them, respectively, in which they respectively do business, and your orator, coming as it does into direct competition with said institutions, will be driven out of business if subjected to local taxation; wherefore it respectfully insists it is protected by the acts of Congress against such unjust discrimination."

The first question is whether the revenue act of November, 1892, taxes the national banks in a way inconsistent with the permission given by Congress.

Section 5219 of the Revised Statutes of the United States is as follows:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by
237 authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes, to the same extent according to its value, as other real property is taxed."

The State derives its power to tax national banks from this section. The question is whether the provision for taxation of banks under the revenue act of November, 1892, is a violation of this section. The provisions of that act are that all banks shall be taxed upon their real property, and personal property and also taxed upon their franchises to be assessed by subtracting the value of the tangible property from the value of the capital stock of the company. It is argued that the State has no right to tax the franchises conferred by the Government of the United States. But it has been decided in the case of *Henderson Bridge Co. v. Kentucky*, 166 U. S., 150, and *Adams Express Company v. Kentucky*, 166 U. S., 171, that the word franchise in the revenue act of 1892 was not employed in a technical sense, and that the legislative intention was plain that the entire property, tangible and intangible, of all for-

eign and domestic corporations, and all foreign and domestic companies, possessing no franchise, should be valued as an entirety, that the value of the tangible property should be deducted, and that the value of the intangible property thus ascertained should be taxed under these provisions. It will be seen therefore that the taxation upon all banks is nothing but a tax upon the value of its capital stock. There is no discrimination whatever against national banks in favor of State banks because they are all subject to the same rule of taxation. The Supreme Court of the United States has given section 5219 a very liberal construction in sustaining State taxation of national banks if not inconsistent with the purpose of Congress to prevent a discrimination in favor of State banks as against national banks. Mr. Justice Miller in delivering the opinion of the court in the case of *Davenport Bank v. Daven port Board of Equalization*, 123 U. S., 83, said:

238 "It has never been held by this court that the States should abandon systems of taxation of their own banks or of money in the hands of their other corporations, which they may think the most wise and efficient modes of taxing their own corporate organizations, in order to make that taxation conform to the system of taxing the national banks upon the shares of their stock in the hands of their owners. All that has ever been held to be necessary is, that the system of State taxation of its own citizens, of its own banks, and of its own corporations shall not work a discrimination unfavorable to the holders of the shares of the national banks. Nor does the act of Congress require anything more than this; neither its language nor its purpose can be construed to go any farther. Within these limits, the manner of assessing and collecting all taxes by the States is uncontrolled by the act of Congress."

See also *Mercantile Bank v. New York*, 121 U. S., 138, and *Bank of Redemption v. Boston*, 125 U. S., 60; *Palmer v. McMahon*, 133 U. S., 660.

It is contended however that the definition given to the term capital stock used in the revenue act of 1892 includes more than the sum of the value of the shares of the capital stock of a corporation. It is true that in the case referred to, *Henderson Bridge Co. v. Kentucky*, 17 Ky. L. Rept., 390, the court of appeals held that it was proper for the board of valuation and assessment to fix a valuation of the capital stock of the Henderson Bridge Company at more than the market value of the sum of the shares of the capital stock. In that company, the shares of capital stock aggregated $1,000,000, the market value of which was 90 cents on the dollar. It had a mortgage upon its property to secure a bonded indebtedness of $2,000,000. In reaching the amount of the capital stock of the bridge company the board added the market value of the shares of the capital stock to the value of the mortgaged property, taking it for granted that that would show the real amount of property, tangible and intangible, owned by the company. This mode of assessing the capital stock was held to be proper under the law. In such a case of course the assessment for taxation would be more than

the value of the shares of the capital stock. There could be no such result, however, in the application of the law to national banks, because they are not permitted to issue bonds and do not hold property under mortgage. It is not averred in the bill and it does not appear that the assessment of valuation for taxation against these complainant banks exceeds the market value of their shares of capital stock. However the law may operate, therefore,
239 upon that class of corporations which have bonded indebtedness, it certainly does not in the case of the national banks tax anything more than the equivalent in value of the shares of the capital stock. If it does so, there ought to be some averment to show this. *Supervisors v. Stanley*, 105 U. S., 311. The bill contains no such statement.

Another objection to the operation of the revenue act upon the complainants is, that certain of the State banks and national banks are now, by reason of the previous litigation, enabled to escape all taxation except that provided under the Hewitt act, and that this is a discrimination against them in violation of section 5219, above quoted.

In *Lionberger v. Rouse*, 9 Wall., 468, the fact that a State could not collect a tax past a certain amount in the two banks of issue, which it had at that time, was held no bar to the collection of the tax on the shares of the national banks for a greater amount. In this case Mr. Justice Davis, who delivered the opinion of the court, concluded as follows:

"Without pursuing the subject further, it is enough to say, in our opinion, Congress meant no more by the second limitation in the proviso to the forty-first section of the national banking act than to require of each State, as a condition to the exercise of the power to tax the shares in national banks, that it should, as far as it had the capacity, tax in like manner the shares of banks of issue of its own creation."

In the former litigation certain banks have been declared to be free from taxation by reason of a contract of exemption. By subsequent decisions in the same court—if that be a material question in that court—the former ruling was declared erroneous. But by the doctrine of *res adjudicata* the particular banks engaged in the prior litigation are able to rely upon it as a bar to the enforcement of the law of 1892. That law, by its terms, applied to all banks equally. In so far as the State has had the power to do so, therefore, it has made the taxation of all banks equal. We do not think that the exceptions to the operation of the law, produced by the accident of litigation, can make the discrimination arising between the parties to the litigation, and those who were not parties, a discrimination within the inhibition of section 5219 of the national banking act.

The motions for preliminary injunction will be denied, the demurrers to the bills will be sustained, and the bills dismissed.

240 Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE NORTHERN Bank of Kentucky
vs.
SAMUEL H. STONE and Others, CITY OF LEXINGTON, County of Fayette, City of Paris, County of Bourbon, and The City of Covington. } No. 6585.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

The bill in this case averred that the complainant bank was a corporation originally organized by an act of the General Assembly of Kentucky, approved Feb. 20, 1835, to do a general banking business. Its corporate life was made to terminate May 1, 1865. The act of Feb. 15, 1858, continued the charter privileges of the complainant in full force for twenty years from May 1, 1865, upon its acceptance of certain conditions to which the complainant duly consented. An act approved February 6, 1882, provided that the charter rights and privileges of the complainant should continue and extend in full force for twenty years from and after May 1, 1885; reserved to the General Assembly the right to alter, change, amend or repeal the act, and the charter and amendments thereto; and required that before the act should go into effect it should be approved and accepted by a majority in interest of the stockholders. The act was never accepted or approved by the stockholders. Thereafter another act was passed, approved March 6, 1884, providing that the chartered rights and privileges of the complainant should be extended in full force for twenty years from and after the first of May, 1885, and that the act should go into effect when it should be approved by the stockholders of the bank and notice of the approval given to the governor of the Commonwealth. It did not contain the clause reserving to the legislature the power of repeal. It was duly accepted. The 15th section of the original charter of the complainant required the cashier to pay to the treasurer of the Commonwealth twenty-five cents on each one hundred dollars of stock held and paid for in said bank
241 which should be in full of all tax or bonus; provided, that the legislature might increase or diminish the same, but at no time should the tax exceed fifty cents on each one hundred dollars of stock paid for in said bank. By an act of 1836, the legislature increased the tax to fifty cents, and this the complainant paid each year down to July 1, 1886, when the Hewitt law was passed. The court of appeals of Kentucky as early as 1838 held that the language in the complainant's charter constituted a contract with the State, which was inviolable, and a limitation on the legislative power to tax the stock of the bank, or its property. *Johnson v. Commonwealth*, 7 Dana, 339. By a subsequent decision it was determined by the same court that the limitation included taxation by any of the municipal subdivisions of the State, and therefore prevented such municipal subdivisions from taxing the real estate of the bank, although situated within their boundaries.

Commonwealth and Greenup County v. Farmers' Bank, 6 Bush, 127. The complainant duly accepted, within the required time, the benefit of the Hewitt act by filing a consent in writing under the seal of the bank with the governor of the Commonwealth; and paid the tax under the Hewitt act from that time down to July 1, 1893. Thereafter the auditor of the State refused to receive the tax under the Hewitt law, although tendered by the complainant. Upon the announcement of the decision of the court of appeals in 1895, payment was accepted from the bank for the amount due under the Hewitt law from 1893 to 1896. The principal office of the complainant is in the city of Lexington, in the county of Fayette. It has one branch in the city of Paris, in the county of Bourbon, and another in the city of Covington. The bill avers that the revenue act of 1892 violates the contract between it and the State in the charter and the amendments to the charter and the contract between it and the State under the Hewitt law.

The bill further avers that under the revenue act of 1892 the board of valuation and assessment certified to the authorities of the county of *Bourbon* the proportion of the franchises found to be taxable by the county of Bourbon in the year 1893; that thereupon the county of Bourbon caused to be placed in the hands of James McClure, sheriff of said county, and the collector of its revenue, the tax bill made out accordingly; that on July 13, 1894, the complainant filed in the circuit court of Bourbon county—that being a court of general jurisdiction—its petition against the said county and sheriff, setting forth in said petition, in apt terms, the contract between it and the State in regard to taxation under the original charter and under the Hewitt law, claiming that no taxes
242 could be collected from the complainant except in pursuance thereof during its charter life, and that the act of November 11, 1892, was unconstitutional and void, as impairing the obligation of these contracts, and praying the court to establish these contracts and to enjoin the said Bourbon county and McClure, the sheriff, from attempting to collect any taxes contrary thereto; that issue having been joined upon the complainant's said suit, a judgment was rendered in the Bourbon circuit court to the effect that the act of November 11, 1892, did not violate any contract between the complainant and the State, and judgment was entered accordingly; that thereupon the complainant appealed from said judgment to the court of appeals of Kentucky; that in that court, its appeal having come on to be heard, was argued by counsel, among others, by the attorney general for the Commonwealth of Kentucky on behalf of the Commonwealth, who insisted upon the affirmance of the judgment; but the court adjudged that the judgment of the lower court was erroneous, and remanded the case to the Bourbon circuit court for a judgment in conformity to its opinion, in which opinion it was held that the Northern Bank of Kentucky had an irrevocable contract under the Hewitt act and its charter which prevented the authorities of the State or any of its municipal subdivisions from imposing any other tax than that prescribed in the Hewitt act. The bill concludes as follows:

"The premises considered, the complainant says it has been fully and finally adjudicated in proceedings between it and the said Bourbon county—which represented the Commonwealth, and in law all other municipalities deriving power from the Commonwealth—that complainant's contract is valid and enforcible, and that the complainant cannot be subjected to any greater rate of taxation than that agreed upon by it under the Hewitt law; if the Commonwealth of Kentucky shall be adjudged to have retired from said contract, then to no greater rate of taxation than is provided for under the complainant's charter and amendments."

TAFT, circuit judge, delivered the opinion of the court:

Under the decision already rendered in the case of The Bank of Kentucky against Stone and others there can be no doubt that on the case made both in the bill and on the proof, the defendants, The Board of Valuation and Assessment and Bourbon County, are stopped by the former adjudication from asserting that the complainant bank is liable for any taxes to Bourbon county under the revenue act of 1892, because, as between the complainant and
243 that county, it was adjudicated that the complainant had an irrevocable contract with the Commonwealth by which all taxation against it should be limited to the tax provided in the Hewitt act, and that the tax upon the franchise under the revenue act was a violation of such contract.

It is also contended on behalf of the complainant that the other defendants, Fayette County, The City of Lexington, The City of Covington, and The City of Paris, are equally bound by the adjudication against the county of Bourbon. We do not think that this contention can be sustained. The theory seems to be that, as the county of Bourbon is a municipal corporation under the State government, the State is bound by the adjudication against it, and therefore every other subdivision is bound. It seems to us that this would be extending the doctrine of *res judicata* further than any authority will justify. The argument is based upon the decision of the court of appeals of Kentucky in *Franklin County Court v. The Deposit Bank of Frankfort*, 87 Kentucky, 382. In that case, the Deposit Bank of Frankfort was seeking to enjoin the county court of Franklin county from levying a tax upon its property in addition to the tax of fifty cents a share upon its stock which its charter provided should be in full of all tax or bonus. It was held that this was a contract which prevented any additional tax in any form upon its property by the State. The court then continued:

"But it is contended that its terms do not bar the county and city from levying and collecting taxes for county and city purposes. In this position counsel clearly overlook the fact that the county and city are integrant parts of the State, and that they cannot levy and collect taxes without the authority of the State conferring that right upon them. So the absurdity is presented that the State contracts with the appellee, in consideration of its paying fifty cents on each one hundred dollars of its capital stock, to release it of all tax or bonus—this is the meaning of the language—and at the same

time authorizes its local subdivisions to levy and collect other taxes off of the appellee. That is to say, that the State, by its contract with the appellee, deprives itself of the right to levy and collect other taxes off of the appellee but may, notwithstanding, authorize all of its subdivisions, if the appellee's property were distributed in all of them, to levy and collect other or additional taxes off of it. It seems that it would occur to one at first blush that such a procedure would be a palpable violation of the contract. Under such a contract between individuals a doubt could not exist. The State when she makes a contract, based upon a valuable consideration stands upon precisely the same footing."

244 This decision adjudged two things, first that the State had power by contract to impose a limitation upon the taxing power whether exercised by itself or by municipalities in which it might vest the same power, and second, that the language of the restriction in this case must be construed as intended to limit the whole power whether exercised by State or with the State's permission by municipalities. The argument of counsel assumes that as the county derives its power to tax from the State which is all that was decided in the case cited, it is, in levying taxes, the mere agent of the State and therefore a judgment against the county on a tax question is a judgment against the agent in respect of the business of the principal and is binding upon the latter as a privy. Indeed the argument goes further. It assumes that a county is a part of the State government and therefore a judgment against the county is a judgment in fact against the State. This is applying the doctrines of agency and privity under circumstances to which they have but little application. The source of all political power including the power to tax is in the people of the State. By a constitution they create a State government and a legislature and confer upon the legislature power to organize local municipal governments and to give such governments the power to levy taxes in order to discharge their other appointed functions. The municipal governments are entities distinct from the State government, incurring liabilities of their own in no way binding upon the State, and acquiring rights and property in which the State has no property interest. Except where the law makes the municipal government an agent for the State in collecting the State's taxes or in discharging some other State function, there is no relation between the one and the other of principal and agent as that relation is usually understood in the law. The State may through its legislative branch confer upon, and withdraw from the counties and cities power of taxation, but when the power thus conferred is for the benefit of the local community in which it is to be exercised, its exercise is not by an agent for a principal; it is by a quasi independent government for the benefit of the people within its limits. The legislature, if not restrained by the constitution may by contract with individuals limit its power either to levy taxes itself or to grant the right of taxation to municipalities; and the individual may avail himself of such restriction by resisting taxation in violation thereof either by the State or municipality.

But in a controversy between the individual and the municipality as to the restriction, its existence or extent, the latter is con-
245 tending for the benefit of itself and its people, not for the State and its people. The taxes it proposes to collect are to be spent not for the State at large but for the convenience and benefit of the people within its limits. In seeking by suit to establish its right to tax, therefore, the city or county is not acting as agent for the State but for itself. Hence the judgment is not binding upon the State as principal.

The only other possible relation of privity of the State to the litigation must grow out of the fact that it involves the validity of a power granted by the State to the city or county; but this does not make the State privy to the judgment. In granting the power the State did not enter into an enforceable covenant of warranty with the counties and cities that the power as against every individual was valid. Certainly it cannot be claimed that the State could be vouched in by the county or city as a warrantor of the validity of the power, or by notice of the pendency of the suit could be bound conclusively by the subsequent judgment. If the contention of counsel for the complainant is sound, it must follow that the State and all its municipalities, great and small, would, by a judgment in favor of an individual or corporation against a village in a remote county adjudging a limitation upon the taxing power of the State, be estopped to deny the limitation in any future litigation with the same individual or corporation, although no appeal may have been taken to a higher court and although neither the State nor the other municipalities may have had any notice whatever of the litigation or any right or opportunity to be heard upon the question decided. We do not decide, because it is not necessary to do so, whether a county or city would be privy to a judgment against the State adjudging a limitation upon the taxing power; but it suffices to say that the question is in some important respects different from the one we have been discussing.

The case of *People v. Holladay*, 93 Cal., 241, does not, it seems to us, support the contention of the complainant. In that case the question was of the title to certain property claimed to have been dedicated as a park. The lot was situated in the city of San Francisco and the city and county of San Francisco brought a suit in ejectment to recover possession of the tract from the defendant who had obstructed the use of the same by the public and excluded them therefrom. In this action the city and county were defeated and a judgment rendered, finding that the defendant was the owner of the undivided $\frac{12}{20}$ of land and his title thereto was quieted as against the city and county. Subsequently the attorney general on behalf of the people of the State on relation of one Bryant,
246 brought another suit raising the same question and seeking to oust the defendant from the possession of the same tract. It was held that the city and county of San Francisco had the authority to maintain an action for the purpose of preserving the rights of the general public to the use of squares, or land claimed as such, within its limits, and in such action it was authorized to

put in issue the alleged rights of the people to such easement; and the State was bound by the result of such litigation, if the same was not collusive. It is unnecessary for us to express an opinion upon the correctness of this decision because it can be easily distinguished from the case at bar. The city and county of San Francisco in the former litigation represented the same public which was represented by the State in the case before the court. The controversy was over the public use in the city of land claimed as a public square. It was obvious that the city, county and State were representing the same interest and the same right with respect to exactly the same subject-matter. In the present case the subject-matter of the former litigation was the taxes due from the complainant bank to Bourbon county—taxes which were to be expended by Bourbon county for county purposes and for the benefit of the people living in Bourbon county. The subject-matter of the present action which it is sought to conclude by the former action is the taxes due from the complainant bank to the city of Paris to be expended for the benefit of the people of that city, to the county of Fayette to be expended for the benefit of the people of Fayette, to the city of Lexington to be expended for the benefit of the people of Lexington, and to the city of Covington to be expended for the benefit of the people of the city of Covington. The rights of these various municipal corporations to the taxes claimed grow out of the same revenue act of November, 1892, but the parties and the persons in interest are different.

We have not deemed it necessary to consider another serious objection which might be urged to the use of a decree against Bourbon county to bar the State and other counties, and that is that in the absence of power to enjoin the State in a suit, it would be difficult to justify the plea against the State of *res judicata* based on a decree of injunction against a municipality or State agency which does not enjoy the same immunity. To give the decree the effect would seem to violate the State's exemption from suit. It suffices, however, to place our decision on the ground first above stated.

247 The fact that the attorney general appeared on behalf of the Commonwealth in this litigation when it reached the court of appeals is not a circumstance which could be held to bind the Commonwealth and all of its agencies by the litigation. There were a great many tax cases pending before the court at the same time. In some of these cases, the Commonwealth was a party and the attorney general was therefore present to argue the question on its behalf in those cases. Even if this had not been the case, the case of *Carr v. The United States*, 98 U. S., 433, shows that the appearance of the attorney general on behalf of the counties could not bind the State. In the case referred to the point in controversy was over the title to land of the United States to certain lots in possession of its officers in San Francisco. The United States filed a bill to quiet title to the property. The defendant set up by way of estoppel certain judgments in ejectment rendered by the State court at the suit of his grantor against certain officers of the Government who as its agents, had possession of the lots. In those actions the United States district attorney and additional counsel employed by

the secretary of the treasury appeared for the defendants and the question of title had been the same. It was held that the former judgment was not an estoppel against the United States. Mr. Justice Bradley in delivering the opinion of the court said:

"It may be contended that the United States consented to have its title determined in these cases, and that such consent was manifested by the employment of the district attorney and additional counsel to aid in the defense. But we do not think that any such inference can be legally deduced from the action of the Secretary of the Treasury. He may have deemed it prudent to assist the officers who were sued, without intending to waive any of the rights of the Government. And in fact, he had no authority to waive these rights."

The attorney general of the State in these cases in appearing in the court of appeals of Kentucky for the county of Bourbon did not intend to waive any rights of the State, and, so far as appeared, he had no authority to do so.

Our conclusion therefore is that the complainant bank cannot in its controversy with the city of Lexington, Fayette county, the city of Paris and the city of Covington and with the board of valuation and assessment so far as concerns the apportionment and certification of the assessment by the board to *those* municipalities, rely upon or derive any benefit from the decree in the complainant's favor against Bourbon county.

We are thus brought to the question whether, as between
248 the defendants just named and the Northern Bank of Kentucky, the latter has by virtue of its acceptance of the Hewitt act an irrevocable contract with the State of Kentucky, by which the taxes to be imposed during its corporate existence upon it shall be limited to those provided in the Hewitt act. A second and alternative question is presented by the bill of the bank and by the argument of its counsel. It is contended that even if the State had the right at any time to withdraw from the contract with the complainant bank entered into by the latter's acceptance of the Hewitt act, there must be restored to the complainant the tax limitation under its charter which it was enjoying when it accepted the terms of the Hewitt act.

The original charter of the bank granted in 1835, provided that it should pay into the treasury twenty-five cents a share of stock which should "be in full of all tax or bonus; provided that the legislature may increase or diminish the same, but at no time shall the tax exceed fifty cents on each" share of stock. In 1836 the legislature increased the tax to 50 cents a share. In 1838 this was held by the court of appeals of Kentucky to be an irrevocable contract between the bank and the State preventing the State from taxing the property of the bank or its stock either against the bank or against its holders. (*Johnson v. Commonwealth*, 7 Dana, 339.) In 1869, it was held by the same court that the same contract in another charter prevented taxation of the bank by counties and cities. *Farmers' Bank v. Commonwealth*, 6 Bush, 127. These decisions never have been overruled. Manifestly if the limitation was

continued in extensions of the charter, it was broad enough to prevent taxation by the counties and cities, defendants in this case, under the revenue act of 1892.

The original charter of the bank expired May 1, 1865. By an act approved February 15, 1858, the chartered privileges and rights of the president, directors and company of the Northern Bank of Kentucky were continued in force for twenty years from the first day of May, 1865. The extension was granted subject to certain restrictions on the powers of the bank not contained in the original charter and imposed on it the obligation to establish certain branches. In 1882, the legislature passed an act to extend the charter of the bank for twenty years from May 1, 1885. That act contained this clause:

"SECTION 3. The General Assembly of the Commonwealth of Kentucky hereby reserves to itself the right to alter, change, amend or repeal this act, and the charter and amendments thereto extending this act at its pleasure."

249 This act was not accepted by the bank in accordance with its terms. Two years later another act was passed which read as follows:

"SECTION 1. That the chartered rights and privileges of the President, Directors and Company of the Northern Bank of Kentucky shall continue and be extended in full force for twenty years from and after the first day of May, one thousand and eight hundred and eighty-five.

"SECTION 2. That said bank, under the continuance and extension hereby granted, shall be subject to all the restrictions, limitations, penalties, conditions and duties, and be entitled to all the rights granted to and imposed upon it by the act of its incorporation, and the acts amendatory of or relating thereto.

"SECTION 3. Said bank may be known by, and sue and be sued, contract and be contracted with, by and under the name of the Northern Bank of Kentucky, as fully as by and under its present name.

"SECTION 4. This act shall go into effect when it shall be approved by the stockholders of said bank at their regular annual meeting, or at a called meeting ordered for that purpose by the president and directors of said board, at which called meeting a majority in interest of said stockholders shall be present. Notice of said approval shall be given by the president of the bank to the governor of this Commonwealth."

The question is whether this act is to be construed and read with the act of 1856, as a part of it. The act of 1856, read as follows:

"SECTION 1. That all charters and grants of or to corporations, or amendments thereof, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: Provided, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested.

"SECTION 2. That when any corporation shall expire or be dissolved, or its corporate rights and privileges shall cease by reason

of a repeal of its charter, or otherwise, and no different provision is made by law, all its works and property, and all debts payable to it, shall be subject to the payment of debts owing by it, and then to distribution among the members according to their respective interests; and such corporation may sue and be sued as before, for the purpose of settlement and distribution as aforesaid.

"SECTION 3. That the provisions of this act shall only apply to charters and acts of incorporations to be granted hereafter; and that this act shall take effect from its passage."

The court of appeals of Kentucky, in the case of the *Franklin County Court v. Deposit Bank of Frankfort*, 87 Ky., 382 (June,
250 1888), held that the act of 1856 did not apply to subsequent acts extending charters granted before its passage, and that the exemption from further taxation was as inviolable under the extended charter as it was during the life of the original charter. But in the case of *Deposit Bank of Owensboro v. Daviess County*, 39 S. W. R., 1050 (March, 1897), a majority of the court of appeals expressly overruled the decision in *Franklin County Court v. Deposit Bank*, and held that the act of 1856 must be read into all charter extensions granted after its passage, whether the original charter was granted before the act of 1856 or not. It was said that the last ruling was *obiter dictum*, and unnecessary in deciding the case before the court. But this is by no means clear. In the latter case the question involved the construction of the Hewitt act. In all discussions of that act it had been supposed to be a material preliminary step to determine whether there were any banks which would surrender an irrevocable tax exemption privilege in accepting the terms of the Hewitt act. We think we must, therefore, treat the two decisions above cited as conflicting; and, in any event, it is for us now to exercise an independent judgment in the matter.

In the earlier decision the court of appeals held that the extension related back to the date of the original charter, and that therefore the act of 1856 did not apply, because, by its third section, its application was limited "to charters and acts of incorporation to be granted" thereafter. It was further held that even if the act of 1856 would apply to extensions of old charters, it did not do so here, because the various provisions of the extension act of 1872 manifested an intention of the legislature so clear as to be "plainly expressed" that the act of 1856 should not apply. We cannot concur in the view that the act of 1856 did not apply to subsequent extensions of old charters. The purpose of such a reservation act is too clear to be misunderstood. It was to prevent the granting of corporate powers, franchises or privileges in such a way as to be beyond the control and regulation of the legislature, unless the legislature "plainly expressed" its purpose to reserve the power to alter, amend or repeal. The reason for the act was the inconvenience experienced from the irrevocable charters theretofore granted. Is it to be supposed that the legislature, in the act of 1856, intended to allow those charters, which had led to the enactment of the law, to be extended without being affected by its restrictive provisions? The first section of the act applies "to *all* charters

and grants of or to corporations *or amendments* thereof, and *all other* statutes." The third section limits the application
251 of the act "to charters and acts of incorporations to be granted hereafter." We think that this extension was a grant to a corporation or an act of incorporation granted after the act of 1856. It seems to us a strained and narrow construction to carry back its date by relation to the time of the original charter. In some senses it is true that the extension merely carries on the same old corporation, giving it additional life, but within the purpose of the act of 1856 to prevent the granting of irrevocable exemptions, the giving of additional life to such an immunity was a new grant—a new charter. It is our duty to give effect to this act so as to avoid the evil aimed at by the legislature, and no refined reasoning as to the question whether an extension is the lengthening of an old life, or the granting of a new one, ought to blind us to the palpable intention of the legislature to prevent, except by express words, the future granting of irrevocable powers, privileges or exceptions. It is well settled by the Supreme Court of the United States that tax exemptions are not favored, and are to be given the strictest construction (*Ohio Life Insurance & Trust Company v. Debolt*, 15 How., 435); and it may well follow, as a corollary to these principles, that laws passed by the legislature to prevent irrevocable tax exemptions are to be liberally construed.

The next question is whether there is anything in the act of extension to justify us in holding that there is an intention "plainly expressed" in it to make the rights and privileges therein extended irrevocable. The act of extension under consideration in the case of *Franklin County v. Deposit Bank, supra*, was the first act of extension, which was quite elaborate and contained many new conditions; but the one we have to consider is a simple extension without new conditions, except that it shall be formally accepted by the bank. We are unable to perceive any plain expression of the intention of the legislature to make the rights and privileges granted irrevocable. They are granted for twenty years, and without the rule of construction enjoined in the act of 1856, this would be held to imply an intention that they should not be subject to amendment or repeal during that period. But the act of 1856 was passed for the precise purpose of avoiding the usual implication and of requiring affirmative language to sustain the claim, that rights and privileges granted for any length of time could not be revoked before its expiration. *Griffin v. Kentucky Ins. Co.*, 3 Bush, 592; *Cumberland & Ohio Railroad Co. v. Barren County*, 10 Bush, 609. We find no such affirmative lan-
guage in this act. We cannot attach the significance
252 that counsel do to the passage of two acts, extending the charter of the Northern bank, the one containing an express reservation, and the other enacted two years later omitting it. Each act must be construed as it stands, and in the absence of something affirmative in the latter act itself to exclude the act of 1856, it is to be treated as part thereof. This conclusion makes it unnecessary for us to consider the soundness of the proposition that, upon repeal

of the Hewitt act, those who had surrendered exemptions were entitled to a restoration of them.

We come, then, to the question: Did the Hewitt act confer on the banks accepting it a contractual immunity from taxation incapable of repeal during their corporate existence? The first section of the article of the Hewitt act provided that shares of stock in State and national banks, and other institutions of loan and discount, and in all corporations required by law to be taxed on their capital stock should be taxed seventy-five cents a share, and upon all surplus over and above 10 per cent. on their capital stock the same rate of taxation as was assessed upon real estate which, it was declared, should be in full of all tax, State, county and municipal. The fourth and remaining sections of the article we give below:

"SECTION 4. That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank.

"SECTION 5. The said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly: Provided, they pay the tax provided in section 1 from the passage of this act.

"SECTION 6. This act shall be subject to the provisions of section 8, chapter 68 of the General Statutes.

"SECTION 7. If any bank, State or national, shall refuse or fail to pay the tax imposed by this act, or shall fail or refuse to make the consent and agreement as prescribed in section 4, the shares of stock of such bank, institution or corporation, and its surplus, undivided accumulations and undivided profits, shall be assessed as directed by section 2 of this act, and the same taxes—State, county and municipal—shall be imposed, levied and collected upon the assessed shares, surplus, undivided profits and undivided accumulations as is imposed on the assessed taxable property in the hands of individuals: Provided, that nothing herein contained shall be construed as exempting from taxation for county or municipal purposes any real estate or building owned or used by said banks or corporations for conducting their business, but the same may be taxed for county and municipal purposes as other real estate is taxed."

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Section 8, chapter 68 of the General Statutes, referred to in section 6, *was the above act of 1856.*

But for the respect we feel for the judgment of the majority of

the court of appeals, deciding the bank-tax cases, 97 Ky., 591, and the very able opinion of Chief Justice Pryor in support of that judgment, we should have thought that there could be no doubt of the necessary construction of the article of the Hewitt act, above quoted. The act of 1856 is incorporated in the article of the Hewitt act above quoted, not merely by a rule of construction enjoined by a preceding legislature, and presumably accepted by the legislature passing the Hewitt act, but the latter legislature has expressly and affirmatively adopted it *as part of the article.*

It is said, however, that the sixth section was not intended to apply at all to the contract of limited tax exemption contained in the fourth section, but that its purpose is to be found in, and limited to, the desire of the legislature to secure to itself the right to repeal the act before the acceptance of its terms by the banks. The suggestion seems to us utterly inadequate to explain the insertion of the section in the act. All the banks were required to accept the act before the next meeting of the legislature, so that the right to repeal must, in this view, have been limited to the short time remaining of the pending session of the legislature, and the interval when the legislature was not in session. With submission, a construction limiting the reservation clause to so inconsequential a purpose is unreasonable. Since the decision by the Supreme Court in *State Bank v. Knoop*, 16 How., 369, in 1853, that a State might restrict its taxing power over a corporation by charter provisions in the nature of a contract which was irrevocable, the main object of the clause reserving power in the legislature to alter or repeal charters and acts of incorporation has been to render tax exemption revocable, and it is to miss wholly the significance of such a clause to hold that it has no application to a tax limitation, *when it is*
254 *expressly made part of the act declaring such limitation.* It would be extremely difficult for a court, bound to follow the decisions of the Supreme Court of the United States, to hold that a clause of an act expressly reserving in the legislature the right to amend or repeal it does not apply to tax exemptions conferred by the same act. In *Tomlinson v. Jessup*, 15 Wall., 454, an act of South Carolina provided that every charter or incorporation granted or renewed should, at all times, be subject to amendment, alteration or repeal, unless the granting or renewing act should, in express terms, provide otherwise. The question was, whether this applied to a tax exemption of the property of a company which was in terms to last during the continuance of the existing charter. The Supreme Court held that it did. Mr. Justice Field said, in delivering the opinion of the court:

"There is no subject over which it is of greater moment for the State to preserve its power than that of taxation. It has, nevertheless, been held by this court, not, however, without occasional earnest dissent from a minority, that the power of taxation over particular parcels of property, or over property of particular persons or corporations, may be surrendered by one legislative body, so as to bind its successors and the State. * * * In these cases, and in others of a similar character, the exemption is upheld as

being made upon considerations moving to the State which give to the transaction the character of a contract. It is thus that it is brought within the protection of the Federal Constitution. In the case of a corporation, the exemption, if originally made in the act of incorporation, is supported upon the consideration of the duties and liabilities which the corporators assume by accepting the charter. When made, as in the present case, by an amendment of the charter, it is supported upon the consideration of the greater efficiency with which the corporation will thus be enabled to discharge the duties originally assumed by the corporators to the public, or of the greater facility with which it will support its liabilities and carry out the purposes of its creation. Immunity from taxation, constituting in these cases a part of the contract with the Government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the legislature may deem it expedient for the public interests that the revocation shall be made. The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges and immunities derived by its charter directly from the State. Rights acquired by third parties and which have become vested under the charter, in the legitimate exercise of its powers, stand upon a different footing; but of such rights it is unnecessary to speak here. The State only asserts in the present case the power under the reservation to modify its own contract with the corporators; it does not contend for a power to revoke the contracts of the corporation with other parties, or to impair any vested rights thereby acquired."

The "reservation" clause has been applied to tax-exemption privileges in accordance with the doctrine above declared in *Railroad Company v. Georgia*, 98 U. S., 359, and *Hoge v. Railroad*, 99 U. S., 348.

The court of appeals of Kentucky in the bank-tax cases relied much on the case of *New Jersey v. Yard*, 95 U. S., 104. In that case the question was whether a tax exemption was subject to repeal under a general reservation act. The railroad company which was claiming the exemption had been organized in 1835 before the passage of the reservation act. A supplement was passed expressly reserving the power of repeal. A second supplement without any reservation was passed. This second supplement related to a tax controversy and provided for a settlement of it by written acceptance by the railroad company. It was held that the general reservation act did not apply to a limited tax exemption granted to the company in this supplement. The court pointed out that general acts of reservation passed by one legislature are binding on a subsequent legislature only so far as it chooses to conform to them, and that it is a question in every case whether the legislature making a contract intends the former reservation act to become by implication a part of the contract. In the case before the court it was held that the provision for specific rate of taxation was inconsistent with such an implication because there was a fair adjustment of a sub-

ject of dispute for a valuable consideration on both sides, because the contract assumed the shape of a formal written contract, and because of the scope of the words of the contract, which were that "this tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State or any law thereof." Were it not for the sixth section of the Hewitt act, the case would have a most important bearing in considering whether the legislature passing the Hewitt act intended that the act of 1856 should be incorporated by implication in the Hewitt act. But that which was a matter of inference and argument in *New Jersey v. Yard*, is in the case before us determined by the express declaration of the legislature passing the Hewitt act. Those circumstances and that language of the act under consideration which were regarded in the Yard case as inconsistent with an implication that the general reservation act should be read into it, cannot
256 prevail against the express direction by the legislature that the reservation act must be applied to it. It is as the Supreme Court declares it to be, only a question of legislative intention, and when the intention is expressly declared there is no room for implication.

The fourth section of the Hewitt act, construed in the light of the reserved power of repeal in the sixth section, was a proposal to the banks that they should pay a certain tax and no more during their corporate existence unless the legislature should see fit sooner to withdraw from the agreement. The question is asked why the old banks should surrender their charter right to a lower tax assessment for the rate fixed under the Hewitt act if it is true that the legislature could withdraw from it at pleasure. It is a sufficient answer to say that they had in fact no irrevocable exemption to surrender, and though they claimed it, and had then the decision of a State circuit court upholding the claim, it was so doubtful that they preferred to accept a somewhat higher rate of taxation by the State alone than to run the risk of being subjected to the much heavier taxation, both State and local, imposed by the seventh section of the Hewitt act upon banks which should not accept the proposal of the fourth section.

Having concluded that the act of 1856 must be applied to the fourth section, the question remained whether the tax exemption, after acceptance by the banks, was a "right previously vested" within the proviso of that act. If so it cannot be impaired. The court of appeals held that it was such a right. We cannot concur in this view. It seems to us that the legislature in this proviso was merely expressing in words the limitation that always exists upon the reserved power of amendment or repeal of corporate charters. A legislature cannot by amendment or repeal of a charter deprive the member of a corporation of the property or contract rights it has acquired by the exercise of its corporate powers. *Commonwealth v. Essex Co.*, 13 Gray, 239; *Miller v. State*, 15 Wall, 478; *Sage v. Dillard*, 15 B. Mon., 349; *Holyoke Company v. Lyman*, 15 Wall., 478. It cannot annul contracts made by the corporation with third persons in the exercise of its lawful franchises. It cannot undo that which is

done. It cannot say that that does not exist which does in fact exist. It cannot recall an executed grant of property. But it can revoke for the future anything in the charter of a promissory character, whether it is contractual or merely gratuitous. In *Greenwood v. Freight Co.*, 105 U. S., 13–19, the question was of the effect of the repeal of an act conferring a charter upon a street railway
257 company that had built its track in the streets. Mr. Justice Miller, speaking for the court, said :

"If the essence of the grant of the charter be to operate a railroad and to use the streets of the city for that purpose, it can no longer so use the streets of the city, and no longer exercise the franchise of running a railroad in the city. In short, whatever power is dependent solely upon the grant of the charter and which could not be exercised by unincorporated private persons under the general laws of the State is abrogated by the repeal of the law which granted these special rights."

See also *State v. Miller*, 21 Barb.; *Zabriskie v. H. & N. R. R. Co.*, 18 N. J. Eq., 175; *Oldtown v. Lincoln R. R. Co. v. Veazie*, 39 Me., 571 : *Hathorn v. Calef*, 2 Wall., 10–24 ; *Commonwealth v. Essex Co.*, 13 Gray, 239. The limited tax exemption under the Hewitt act was a contract between the bank and the State. The reserved right to repeal made the contract one which the State could revoke at pleasure. The court of appeals in the bank-tax cases relied on the *Commissioners of the Sinking Fund v. Green & Barren River Navigation Co.*, 79 Ky., 73. It that case it was decided that the legislature could not, under the act of 1856, take from the navigation company, without making compensation therefor, the right it had acquired under a contract with the State to take for a term of years tolls from vessels navigating the Green and Barren rivers in consideration of its agreement, then fully performed, to put in repair and maintain at its own expense the line of navigation. It may be hard to reconcile this case with *Greenwood v. The Freight Company*, but it can be distinguished from the case at bar. In the case cited the court treated the right which the State proposed to exercise as a reserved right of rescission and held that it could only be exercised on condition that the grantee of the State should receive compensation for the money advanced to improve the property of the State the use of which he was not permitted to enjoy. In the case at bar, the banks surrendered nothing of value to the State for the limited tax exemption of the Hewitt act, and the power of revocation was not in any view, therefore, trammelled by conditions.

In view of our conclusion that the complainant has not established, as against any of the defendants, except Bourbon County, the existence of an irrevocable contract of tax exemption, either by *res judicata* or on the merits, and as this issue thus presented and decided is the only one upon which complainant, a corporate citizen of Kentucky, can ask a Federal court for relief, we do not pass upon or decide the question raised by complainant under the
258 State decisions whether prior decisions of the court of appeals, though now overruled, prevent the collection of taxes

accruing during those years when the prior decisions holding them uncollectible and void remained unreversed.

For the reasons given the order of the court will be that the motion for an injunction against Bourbon County and the certification of the assessment to it by the board of valuation is granted and to this extent the demurrers to the bills are overruled. But as to the certifications of the assessment to the other municipalities the demurrers are sustained and the bill dismissed.

259 Circuit Court of the United States, District of Kentucky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF Kentucky *vs.* CITY OF LOUISVILLE. } No. 6556.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

The bill filed herein presents the same questions as those already considered in the case of the *Bank of Kentucky v. Samuel H. Stone, etc.*, but it relates to the taxes for 1893–'94, which were certified down by the State board of valuation and assessment to the city of Louisville for collection. We do not think that the questions differ in any respect from those already considered, and must, therefore, hold that the city of Louisville is estopped by the former judgment between the Bank of Kentucky and it, in which it was held by the court of appeals of Kentucky that the Bank of Kentucky had an irrevocable contract under the Hewitt act for the exemption of the property and franchise of the Bank of Kentucky from any other taxation than as therein imposed; and, therefore, that the bank is entitled to the preliminary injunction against the collection by the city of Louisville and its agents of the taxes provided in the revenue act of November, 1892.

The demurrer to the bill is overruled, and the motion for an injunction granted.

260 Circuit Court of the United States, District of Kentucky.

LOUISVILLE BANKING COMPANY *vs.* CITY OF LOUISVILLE. } No. 6562.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

This case presents the same questions as are presented in the case of the *Louisville Banking Co. v. Samuel H. Stone, etc.*, already disposed of, but involves the taxes for 1893 and 1894. The taxes for 1895, 1896, 1897 and 1898 were involved in the prior case.

The order will be that the preliminary injunction prayed for shall issue, and that the demurrers to the bills be overruled.

261 Circuit Court of the United States, District of Kentucky.

LOUISVILLE BANKING CO. *vs.* SAMUEL H. STONE, ETC. } No. 6561.

LOUISVILLE BANKING CO. *vs.* CITY OF LOUISVILLE. } No. 6562.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

These cases present substantially the same questions as those already passed upon in the case of the Bank of Kentucky against the same defendants. The complainant company was a corporation organized after the act of 1856, but before the Hewitt act. It duly accepted the provisions of the Hewitt act. After the passage of the revenue act of November, 1892, and the adoption of the ordinance by the city of Louisville imposing a license upon the gross receipts of banks doing business within its limits, a warrant was sued out by the city of Louisville in its police court against the Louisville Banking Company for a failure to pay the license. This bank filed a petition for a writ of prohibition in the circuit court of Jefferson county against R. H. Thompson, the police judge, averring that the ordinance of the city of Louisville was void as impairing an obligation of the complainant's contract with the State under the Hewitt act, and that any authority given to the city of Louisville to pass such ordinance by the revenue act of November, 1892, was likewise void as impairing the obligation of the contract. The petition prayed that the police judge might be prohibited from taking jurisdiction of the proceeding against complainant for a violation of the ordinance. Issue was joined on this petition by the defendant, The Judge of the Police Court of the City of Louisville. The city of Louisville, though not a party in name,
262 was, in reality, the party defendant, and appeared by counsel. Indeed, the proceedings were taken for the purpose of testing the validity of the license ordinance by agreement between the city attorney and the complainant bank. The Jefferson circuit court found the issues in favor of the defendant and entered a decree dismissing the petition. Thereupon the complainant banking company caused an appeal to be taken in its name from the judgment of the Jefferson circuit court to the court of appeals, and to that appeal it made the city of Louisville and R. H. Thompson, the police judge, parties. In the court of appeals the cause was argued by the counsel for the city of Louisville. The court of appeals reversed the judgment of the Jefferson county circuit court, and in its opinion held that the ordinance of the city of Louisville was void, for the reason that the Louisville Banking Company had an irrevocable contract with the Commonwealth upon its due acceptance of the terms of the Hewitt act, limiting the amount of taxes to

which it was subject to those imposed by that act during its corporate existence.

For the reasons already stated in the case of the bank of Kentucky against the same defendants, we think it conclusively established, as between the parties by a former adjudication, that the complainant had an irrevocable contract under the Hewitt act with the Commonwealth of Kentucky, by which no greater taxes than therein provided could be imposed upon it by the Commonwealth or under its authority.

For the reasons stated in the same opinion, we think the complainant entitled to equitable relief to prevent a violation of that contract by the taxes assessed under the revenue act of 1892. An order for a preliminary injunction, therefore, must issue in these cases, and the demurrers to the bills must be overruled.

263 Circuit Court of the United States, District of Kentucky.

THE FARMERS' BANK OF KENTUCKY
vs.
SAMUEL H. STONE and Others.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

This case is controlled by the points already decided. The Farmers' bank, in prior adjudications with the county of Franklin, the city of Frankfort and the city of Henderson, was conclusively adjudged to have an irrevocable contract under the Hewitt act, exempting it from any taxation in excess of that provided therein. There was no such adjudication, however, between the Farmers' bank and either Scott county or Henderson county. It therefore follows, from what has already been decided, that as to Scott county and Henderson county, the demurrers to the bill should be sustained, and the bill must be dismissed; while as to the other defendants, the demurrers will be overruled and the motions for a preliminary injunction granted.

264 Circuit Court of the United States, District of Kentucky.

THE DEPOSIT BANK OF FRANKFORT
vs.
SAMUEL H. STONE and Others.
No. 275.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

In an injunction suit brought by the Deposit Bank of Frankfort against the county of Franklin, in the Franklin circuit court, to prevent the collection of any taxes under the revenue act of 1892, in excess of those imposed by the Hewitt act, it was expressly adjudged on appeal by the court of appeals that the bank had, by its due acceptance of the terms of the Hewitt act, an irrevocable con-

tract of exemption from taxation in excess of that imposed in the Hewitt act, and that the revenue act of 1892 violated this contract. In a similar injunction suit brought by the bank against the city of Frankfort, a decree, in all respect similar, was entered on the same ground. In accordance with our decision, in the case of Bank of Kentucky against Stone, just decided, we must, therefore, grant the motion for a preliminary injunction, and overrule the demurrer to the bill.

265 Circuit Court of the United States, District of Kentucky.

THIRD NATIONAL BANK, Complainant,
vs.
SAMUEL H. STONE, CHARLES FINLEY, G. W. LONG, and The City of Louisville, Defendants. } No. 6573.

THIRD NATIONAL BANK, Complainant,
vs.
THE CITY OF LOUISVILLE, Defendants. } No. 6574.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

These cases present the same question which arose in the case of the Louisville Banking Company against the same defendants already decided. The suit against the city of Louisville relates to the taxes under the revenue act of 1892, for the years 1893 and 1894, and the suit against Stone and others and the city of Louisville relates to the taxes for 1895, 1896, 1897 and 1898. In the prohibition suit brought by the Third national bank against the judge of the police court, to which the city of Louisville became a party on appeal, it was held by the court of appeals of Kentucky that the Third national bank, by its formal acceptance of the provisions of the Hewitt act, had acquired a contract right irrevocable by the State exempting it from all taxes except those provided under the Hewitt act, and that the license tax imposed by the city of Louisville under a statute of the State was, therefore, a violation of the contract, and void under the Constitution of the United States.

The demurrer to the bills are therefore overruled, and the motions for preliminary injunction against the defendants are granted.

266 Circuit Court of the United States, District of Kentucky.

LOUISVILLE CITY NATIONAL BANK
vs.
SAMUEL H STONE AND OTHERS. } No. 6565.

LOUISVILLE CITY NATIONAL BANK
vs.
CITY OF LOUISVILLE. } No. 6566.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges. Taft, circuit judge, delivered the opinion of the court.

These cases are controlled by the case of Bank of Commerce against City of Louisville. On the principle of privity and *res judicata* laid down in that case, we grant the motion for a preliminary injunction and overrule the demurrer to the bill.

267 Said replication to the answer of the Board of Councilmen of the City of Frankfort and the County of Franklin, filed herein by order of court on June 25th, 1898, is in words and figures as follows, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
versus
SAMUEL H. STONE and Others, Defendants.

Replication to the Answer of the Board of Councilmen of the City of Frankfort and the County of Franklin.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto, saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants

268 are uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, are true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays in and by its said bill it hath already prayed.

W. S. PRYOR &
JNO. W. RODMAN,
Att'ys for Complainants.

Said replication to the answer of the city of Henderson and county of Henderson filed herein on June 25th, 1898, is in the following words and figures, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
SAMUEL H. STONE and Others, Defendants.

Replication to the Answer of the City of Henderson and County of Henderson.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant. Without this that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, are true; all which matters and things this repliant is and will be ready to aver and prove as this honorable — shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. S. PRYOR &
JNO. W. RODMAN,
Atty's for Compl't.

269 Said supplemental answer of the Board of Councilmen of the City of Frankfort, tendered and made a part of the record herein on June 25th, 1898, is in words and figures as follows, viz:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

THE FARMERS' BANK OF KENTUCKY
vs.
SAMUEL H. STONE, CHARLES FINLEY, G. W. LONG, City of Louisville, County of Franklin, and Board of Councilmen of City of Frankfort. } In Equity.

Supplemental answer of the above-named Board of Councilmen of the City of Frankfort, one of the defendants, to the bill of complaint of the above-named Farmers' Bank of Kentucky.

Reiterating its original answer to the said bill, and without waiving demurrer to the jurisdiction of its general demurrer to the bill, but reiterating and relying upon the same, the Board of Councilmen of the City of Frankfort, for supplement to its original answer to the said bill, says as follows:

On January 21st, 1898, the board of councilmen of the city of Frankfort filed in the office of the clerk of the Kentucky court of appeals a certified copy of the judgment of the Franklin circuit

court rendered on January 21st, 1896, in the case of The Farmers' Bank of Kentucky against The Board of Councilmen of the City of Frankfort (set forth on pages — of the printed record herein and relied upon by complainant bank as conclusive of this defendant's rights herein), and prayed an appeal from said judgment to the court of appeals of Kentucky, which appeal was granted and process thereon to Franklin county was issued by the clerk of said court of appeals on January 21st, 1898, which process (summons) was duly executed by the sheriff of Franklin county upon complainant bank on January 21st, 1898. By said summons the complainant bank was duly notified of the pendency of said appeal and was thereby warned to appear before said court of appeals at its then approaching April term (1898), and show cause why said judgment of the Franklin circuit court should not be reversed for errors therein contained. Said appeal is now pending
270 in the Kentucky court of appeals, and will be duly prosecuted to decision in said court by this defendant, and same will stand for hearing in said court of appeals at its next (September) term.

A certified copy of the said proceedings in the Kentucky court of appeals for reversal and vacation of said judgment is attached hereto and filed herewith as part hereof.

This defendant Board of Councilmen of the City of Frankfort, submits that there is no equity in the bill; that the injunction prayed for ought not to be granted, and that this court will not exercise jurisdiction of the cause, and prays that said bill be dismissed with costs.

IRA & W. H. JULIAN,
Att'ys for City of Frankfort.

T. HITER CROCKETT, *City Att'y.*

The undersigned, W. S. Dehoney, says that he is the duly elected and qualified and acting mayor of the city of Frankfort, Ky., and that the statements contained in the foregoing supplemental answer of the Board of Councilmen of the City are true.

W. S. DEHONEY, *Mayor.*

Subscribed and sworn to before me by W. S. Dehoney, mayor of the city of Frankfort, on this 21st day of June, 1898.

GUY H. BRIGGS.
Ex. Franklin Co.

Said exhibit filed with the supplemental answer of the Board of Councilmen of the City of Frankfort is as follows, viz:

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable judges of the court of appeals of Kentucky.

Kentucky Court of Appeals.

BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Appellants,
vs.
FARMERS' BANK OF KENTUCKY, Appellee.

Be it remembered that heretofore, to wit, on the 21st day of January, 1898, the appellants filed in the clerk's office of said court a copy of a judgment, which is in the words and figures following:

271 Franklin Circuit Court.

FARMERS' BANK OF KENTUCKY, Plaintiff,
vs.
BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Defendant. } Judgment.

This day came the parties, by their attorneys, and this cause having been heretofore submitted for a judgment conforming to the opinion and mandate of the court of appeals, heretofore filed, reversing the former judgment of this court, and the court being sufficiently advised, it is adjudged that article 2 of the act of the General Assembly entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 14th, 1886 (General Statutes, chapter 92, art. 2), and the acceptance of the provisions thereof by the plaintiff, constituted a contract between the plaintiff and the Commonwealth which the latter cannot alter or change without the consent of the former; by the terms of which contract the plaintiff cannot, during the continuance of its charter, be assessed for taxation or taxed for State purposes in a different mode or at a greater rate of taxation than as provided for in said act, and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of the State and of the act of November 11th, 1892 (act 3, chap. 103, Acts 1891, '2, & '3), in so far as they were intended to provide for any assessment or taxation of the plaintiff's property, rights of property, or franchises, except to assess and tax for county and municipal purposes its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void; that the board of valuation and assessment provided for in said act of November 11th, 1892, had and has no authority in law to assess or value the plaintiff's franchise for taxation, or the auditor to apportion or certify the same or any part of the same for county or municipal taxation; that the temporary injunction which was granted in this cause at the commencement of the action be, and the same

is hereby, made perpetual, and the defendant- be, and each of
272 them are, perpetually enjoined and restrained from levying upon or selling any property of the plaintiff for the — of collecting any taxes for the city of Frankfort upon the franchise or property of the plaintiff, except taxes on its real estate used in conducting its business; and it is further adjudged that the plaintiff recover of the defendant its costs in this action expended.

A copy.
Attest:

THOS. B. FORD, *Clerk*,
By J. R. ELLIOTT, *D. C.*

(Upon the filing of said copy of judgment the appellants, by counsel, endorsed thereon the following statement, to wit:)

Court of Appeals, Ky.

BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Appellant, *vs.* THE FARMERS' BANK OF KENTUCKY, Appellee.	Application for Appeal.

The Board of Councilmen of the City of Frankfort, filing herewith a copy of the judgment of the Franklin circuit court in the case of The Farmers' Bank of Kentucky, pl't'ff, *vs.* Board of Councilmen of the City of Frankfort, def't, rendered at the January term of said circuit court, 1896, hereby made application to the clerk of the court of appelas for an appeal from said judgment, — with process to Franklin.

T. HITER CROCKETT, *City Att'y.*
W. H. JULIAN,
Att'y for Board of Councilmen of the City of Frankfort.

(Whereupon an appeal was granted in accordance with said statement and the following summons issued:)

Summons on Appeal.

The Commonwealth of Kentucky to the sheriff of Franklin county, Greeting:

We command you to summon Farmers' Bank of Kentucky to appear before the judges of the court of appeals of Kentucky, at the capitol, in Frankfort, on the first day of their next April term, to show cause, if any it can, why a judgment obtained by it in
273 the Franklin circuit court against the Board of Councilmen of the City of Frankfort, at its January term, 1896, should not be reversed for the errors therein contained, as we from its complaint are informed; and have then and there this writ.

Witness A. Addams, clerk of our said court, at the capitol aforesaid, this 21 day of January, 1898.

A. ADDAMS, *C. C. A.*
—— ——, *D. S.*

(Here is the officer's return of the foregoing summons:)

Executed on the Farmers' Bank of Kentucky by delivering to Thomas Rodman, president of said bank, a true copy of the within summons June the 21, 1898.

B. F. SUTER, *S. F. C.*,
By P. C. TOWLES, *D. S.*

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, do certify that the foregoing is a full and complete transcript of the proceedings had upon copy of judgment in the case wherein The Board of Councilmen of the City of Frankfort are appellants and The Farmers' Bank of Kentucky is appellee, as shown by the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 10th day of June, A. D. 1898.

[SEAL.]

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

Said petition for appeal and assignment of errors, filed herein on June 25th, 1898, by certain defendants, *was* and *is* in words and figures as follows, viz:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

274	THE FARMERS' BANK OF KENTUCKY, at Frankfort, Complainant, *vs.* SAMUEL H. STONE ET AL., defendants.	Petition for Appeal and Assignment of Errors.

The defendants, Samuel H. Stone, auditor; Charles Finley, secretary of state, and G. W. Long, treasurer of the Commonwealth of Kentucky, The Board of Councilmen of The City of Frankfort, Kentucky, and The County of Franklin, and the County of Henderson and City of Henderson, conceiving themselves aggrieved by the decree made and entered on the 25th day of June, 1898, in the above-entitled cause, do hereby appeal from the said order and decree to the United States Supreme Court for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal may be allowed, and that the transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court.

And the said defendants further say that said decree is erroneous and against the just rights of the said defendants for the following reasons:

First. Because the court erred in overruling the demurrers of each of said defendants to the complainant's petition.

Second. Because the court erred in overruling the plea of the Board of Councilmen of the City of Frankfort and County of Franklin to the jurisdiction herein.

Third. Because the court erred in refusing to permit defendants The Board of Councilmen of the City of Frankfort to file the amended answer offered by them herein on the 25th day of June, 1898.

Fourth. Because the court erred (after deciding that complainant did not have any irrevocable contract under and by virtue of article 2 of the act of the General Assembly of the Commonwealth of Kentucky entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May the 17th, 1886) in adjudging and decreeing, nevertheless, that by reason of the several pleas of *res judicata* relied on by complainant in its bill the complainant has established a contract with the Commonwealth of Kentucky under the provisions of the act aforesaid.

275 Fifth. Because the court erred in enjoining and restraining the defendants Samuel H. Stone, auditor; Charles Finley, and George W. Long from proceeding to value the franchise of the complainant under the act of November the 11th, 1892, for the years 1895, 1896, 1897, and 1898 and for all subsequent years until the expiration of complainant's charter, and also erred in enjoining and restraining the County of Franklin and Board of Councilmen of the City of Frankfort from endeavoring to collect any tax upon any valuation from the complainant, and also erred in adjudging that complainant, by making payment of taxes to the State only in accordance with the Hewitt law, is discharged in full from all taxes, and also erred in adjudging that the present constitution of Kentucky and the act of November the 11th, 1892, in so far as intended to provide or do provide for any assessment or taxation of complainant's property, rights of property, or franchise except under said Hewitt bill, are repugnant to the Federal Constitution and void.

Wherefore the defendants pray that the said decree be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of defendants' answers herein.

W. S. TAYLOR, *Att'y Gen'l for Ky.*
T. HITER CROCKET, *City Att'y.*
IRS & W. H. JULIAN, *Attorneys.*
JAS. H. POLSGROVE,
Co. Att'y of Franklin Co.
CLAY & CLAY,
Att'ys for City of Henderson.
C. E. WARD,
For County of Henderson.

Said petition for appeal and assignment of errors filed herein on June 25th, 1898, by the defendant (?), *is* in words and figures as follows, viz:

Circuit Court of the United States, Sixth Circuit, District of Kentucky.

276 THE FARMERS' BANK OF KENTUCKY, at Frankfort, Complainant,
vs.
SAMUEL H. STONE ET AL., Defendants.
} Petition for Appeal and Assignment of Errors.

The complainant, The Farmers' Bank of Kentucky, conceiving itself aggrieved by the decree entered on the 25th day of June, 1898, in the above-entitled cause, in so far as it relates to the defendants The City of Georgetown and The County of Scott, dismissing its bill of complaint as to said defendants, does hereby appeal from said order and decree to the United States Supreme Court for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that the transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court.

And the said complainant further says that said decree is erroneous and against the rights of th ecomplainant, because the court erred in dismissing the complainant's bill as to the County of Scott and the City of Henderson.

2nd. Because the court erred in not deciding that complainant's contract with the State of Kentucky relieved and protected it from the payment of any taxes whatever to the City of Georgetown or the County of Scott for any purpose whatever.

2. Because the court erred in not issuing an order of injunction against the defendants Sam'l Stone, Chas. Finley, & George Long, enjoining them from making an assessment in any way upon any of the stock of complainant at its bank, at Georgetown, for municipal or county taxation, and it erred in not enjoining the said Stone from making any apportionment of complainant's capital stock to the bank at Georgetown for taxation for any purpose whatever.

Wherefore the complainant prays that the said decree as to the City of Georgetown and the County of Scott be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of complainant's bill of complaint.

W. S. PRYOR &
J. W. RODMAN,
Attorneys for Farmers' Bank of Ky.

277 And on a day following, to wit, on the 16th day of July, 1898, the following agreement was filed herein, viz:

U. S. Circuit Court for the District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Kentucky, and Franklin County, &c., Defendants. } Stipulation.

Citation on the appeal herein is waived, and it is agreed that the clerk in making the transcript for appeal herein may compare the printed record (used in this cause in the application for injunction before Judge Taft) with the record on file in his office and use said printed record, correcting same where it is not the same as the original, and that the clerk may also use the printed opinion of Judge Taft without making a special copy in the transcript for appeal.

Witness our hands this 13th July, 1898.

IRA AND W. H. JULIAN,
Att'ys for Defendants.
J. W. RODMAN,
Att'y for Plaintiff.
J. C. B. SEBREE,
County Att'y for Scott County, Ky.
L. L. BRISTOW,
City Att'y for City of Georgetown, Ky.
W. S. TAYLOR, *Att'y Gen'l.*

And on a day following, to wit, on the 21st day of July, 1898, the following bond was filed herein by defendants, viz:

278 *Bond.*

Know all men by these presents that The Farmers' Bank of Kentucky, as principal, and Jno. W. Rodman, as sure*ties*, are held and firmly bound unto the City of Georgetown, Ky., and the County of Scott, in the State of Kentucky, and Samuel H. Stone, Charles Finley, and Geo. W. Long in the sum of one thousand ($1,000.00) dollars; the payment of which, well and truly to be made, they bind themselves, their successors, administrators, and executors, jointly and severally, by these presents.

Done this 18th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-named Farmers' Bank of Kentucky has prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered by the circuit court of the United States for the district of Kentucky in the case of The Farmers' Bank of Kentucky *vs.* Samuel H. Stone *et al.*, numbered 274 on the docket of said court:

Now, therefore, the condition of this obligation is such that if the said Farmers' Bank of Kentucky shall prosecute said appeal to effect and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE FARMERS' BANK OF KY.,
By THOMAS RODMAN, *Pres.* [L. S.]
JNO. W. RODMAN. [L. S.]

Sealed and delivered and taken and acknowledged this 18th day of July, 1898, before me—

WALTER G. CHAPMAN,
Clerk U. S. Circuit Court, Dist. of Ky., at Frankfort.

Approved:
JNO. W. BARR, *Judge.*

Attached to said bond is the following affidavit of surety, viz:

UNITED STATES OF AMERICA, *District of Kentucky,* } *sct:*

I, Jno. W. Rodman, a surety on the annexed bond, being duly sworn, depose and say that I am worth over and above my just debts, liabilities, and legal exemptions in property subject to execution under the laws of the State of Kentucky the sum of five thousand dollars. Said property consists of real estate situated in the county of —— and State of Kentucky.

JNO. W. RODMAN.

279 Subscribed and sworn to before me by Jno. W. Rodman this July 18th, 1898.

WALTER G. CHAPMAN,
Clerk U. S. Cir. Court, Dist. of Ky., at Frankfort.

And on a day following, to wit, on July 22nd, 1898, the following stipulation was filed herein, viz:

United States Circuit Court for the District of Kentucky.

THE FARMERS' BANK OF KENTUCKY, Complainant,
vs.
THE BOARD OF COUNCILMEN OF THE CITY OF FRANKFORT, Kentucky, and County of Franklin, &c., Defendants. } Stipulation.

Citation on the appeal herein is waived, and to save expense it is agreed that the clerk in making the transcript for appeal herein may compare the printed record used in this cause in the application for injunction before Judge Taft with the record on file in his office and use said printed record, correcting same where it is not the same as the original, and the clerk may also use the printed opinion of Judge Taft without making a special copy and transcript for appeal, one record to answer for both appeals.

Witness our hands this 13th day of July, 1898.

JNO. W. RODMAN,
Att'y for Farmers' Bank of Ky.
IRA & W. H. JULIAN,
For All the Defendants Except City of Georgetown & County of Scott.
THE CITY OF GEORGETOWN, KY.,
By A. H. SINCLAIR, *Mayor.*
J. J. YATES,
Judge of Scott Co., Ky., on Behalf of said County.

And on the same day, to wit, on July 22nd, 1898, the following appeal bond was filed herein, viz:

280 *Appeal Bond.*

Know all men by these presents that Samuel H. Stone, auditor; Charles Finley, secretary of state; G. W. Long, treasurer, of the State of Kentucky; The Board of Councilmen of the City of Frankfort, Kentucky; Franklin County, Kentucky; The City and County of Henderson, Kentucky, as principals, and J. S. Darnell, as surety, are held and firmly bound unto the Farmers' Bank of Kentucky in the sum of one thousand ($1,000.00) dollars; the payment of which, well and truly to be made, they bind themselves, their successors, administrators, and executors, jointly and severally, by these presents.

Done this 20th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered by the circuit court of the United States for the district of Kentucky in the case of Farmers' Bank of Kentucky, complainant, *vs.* Samuel H. Stone *et al.*, defendants, numbered 2744 on the docket of said court:

Now, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAM'L H. STONE, *Auditor*, [SEAL.]
By W. H. JULIAN, *Att'y.*
CHAS. FINLEY, *Secretary of State*, [SEAL.]
By W. H. JULIAN, *Att'y.*
GEO. W. LONG, *Treasurer*, [SEAL.]
By W. H. JULIAN, *Att'y.*
CITY OF HENDERSON, [SEAL.]
By W. H. JULIAN, *Att'y.*
COUNTY OF HENDERSON, [SEAL.]
By W. H. JULIAN, *Att'y.*
FRANKLIN COUNTY, [SEAL.]
By J. D. MOORE, *Judge Co.*
CITY OF FRANKFORT, [SEAL.]
By W. S. DEHONEY, *Mayor.*
J. S. DARNELL. [SEAL.]

Sealed and delivered and taken and acknowledged this 20th day of July, 1898, before me—

W. G. CHAPMAN,
Cl'k U. S. Cir. Court, Dist. of Ky., at Frankfort,
By CHAS. N. WIARD, *D. C.*

Approved by—
JNO. W. BARR,
Judge *U. S. Dist. Judge.*

281 Annexed to the foregoing appeal bond is the following affidavit of surety, viz:

UNITED STATES OF AMERICA, *District of Kentucky*, } *ss:*

J. S. Darnell, a surety on the annexed bond, being duly sworn, deposes and says that he resides at Frankfort, Kentucky, in the county of Franklin, in said district; that he is a freeholder in the State of Kentucky; that he is worth the sum of two thousand ($2,000.00) dollars over and above all his just debts and liabilities in property subject to execution and sale, and that his property consists of real and personal property.

J. S. DARNELL.

Subscribed and sworn to before me by J. S. Darnell this July 20th, 1898.

W. G. CHAPMAN,
Clerk U. S. Cir. Court, Dist. of Ky., at Frankfort,
By CHAS. N. WIARD, *D. C.*

282 UNITED STATES OF AMERICA, *District of Kentucky*, } *sct:*

I, Walter G. Chapman, clerk of the circuit court of the United States for the sixth judicial circuit and district of Kentucky, at Frankfort, do hereby certify that the foregoing 281 pages contain a full and true transcript of the record of the proceedings had in this court in the suit wherein The Farmers' Bank of Kentucky was the plaintiff and Samuel H. Stone, auditor, &c., were the defendants, except exhibit filed with the answer of the Board of Councilmen of the City of Frankfort and the County of Franklin, as the same appears from the records and files of my office.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office, this 21st day of July, A. D. 1898.

WALTER G. CHAPMAN, *Clerk*,
By CHAS. N. WIARD, *D. C.*

Endorsed on cover: Case No. 16,970. Kentucky C. C. U. S. Term No., 385. Samuel H. Stone, auditor; Charles Finley, secretary of state, and G. W. Long, treasurer, of the Commonwealth of Kentucky, *et al.*, appellants, *vs.* The Farmers' Bank of Kentucky; and case No. 16,971. Term No., 386. The Farmers' Bank of Kentucky, appellant, *vs.* Samuel H. Stone, auditor; Charles Finley, secretary of state, & G. W. Long, treasurer, of the Commonwealth of Kentucky, *et al.* Filed September 1st, 1898.